

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LONTEX CORPORATION,

Plaintiff,

v.

NIKE, INC.,

Defendant.

Civil Action No.: 18-cv-5623

(Hon. Michael M. Baylson)

**JOINT STIPULATION TO MODIFY THE RECORD PURSUANT TO FEDERAL RULE
OF APPELLATE PROCEDURE 10(e)(2)(A)**

The parties in the above-captioned action, having met and conferred, and upon determining that good cause exists for the foregoing, hereby stipulate to modify the record in this action to include the “clip reports” of the designated, pre-recorded deposition testimony that was presented to the jury at trial. In support of this stipulation, the parties aver as follows:

1. This Court presided over a two-week civil jury trial in October 2021.
2. During trial, the parties presented the jury with exhibits, live witness testimony (both in-person and remote testimony), and pre-recorded deposition testimony that the parties respectively designated and counter-designated.
3. The Court Reporter transcribed the live witness testimony, which appears on the final trial transcripts that have been filed on ECF.
4. The designated, pre-recorded deposition testimony that was presented to the jury was *not* transcribed, however. As a result, that testimony is not reflected in the final trial transcripts that were filed on ECF.

5. During trial, the parties exchanged and agreed upon the contents of transcribed “clip reports” of the designated, pre-recorded deposition testimony shown to the jury. Those “clip reports” contain complete and accurate transcriptions of the pre-recorded deposition testimony. The clip reports are attached to this stipulation as **Exhibit A**.

6. This case is now on appeal to the U.S. Court of Appeal for the Third Circuit. The appeal has been stayed pending this Court’s entry of a final Amended Judgment, which this Court entered on April 18, 2022.

7. The parties agree that the designated, pre-recorded deposition testimony shown to the jury is trial evidence that should be included in the record for appeal in order to most accurately and completely reflect the trial proceedings that occurred in this Court.

8. Federal Rule of Appellate Procedure 10(e)(2)(A) permits parties to correct or modify the appellate record based on a stipulation of the parties: “If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded: (A) on stipulation of the parties.” Fed. R. App. P. 10(e)(2)(A).

9. Accordingly, the parties hereby stipulate that the clip reports attached to this Stipulation were unintentionally omitted from the record and should be included as part of the supplemental record that is certified and forwarded to the Third Circuit in connection with the pending appeal and cross-appeal.

SO STIPULATED.

Dated: April 27, 2022

Respectfully submitted,

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EXHIBIT A

Designation Run Report

Nike Initials + Lontex Counters

Bechtel, Benjamin 01-10-2020

Nike Initial Designations 01:07:05

Lontex Counters 00:00:38

Total Time 01:07:43



Bechtel-Nike Initials + Lontex Counters

Page/Line	Source	ID
11:15 - 11:19	Bechtel, Benjamin 01-10-2020 (00:00:06) 11:15 Q. Good morning, Mr. Bechtel. 11:16 A. Good morning. 11:17 Q. Could you state your full name 11:18 for the record? 11:19 A. It's Benjamin Ryan Bechtel.	Bechtel.1
13:15 - 13:18	Bechtel, Benjamin 01-10-2020 (00:00:09) 13:15 Do you understand, Mr. Bechtel, 13:16 that you are here today as a corporate 13:17 representative for 1SEO Technologies? 13:18 A. Yes.	Bechtel.2
27:2 - 28:4	Bechtel, Benjamin 01-10-2020 (00:01:02) 27:2 Q. Have you spoken to anybody at 27:3 Lontex about the lawsuit that Lontex has 27:4 filed against Nike? 27:5 A. Not recently. 27:6 Q. When you say "not recently," I 27:7 assume you mean to say that you have spoken 27:8 to somebody before about it; is that correct? 27:9 A. Not about a lawsuit. I can say 27:10 that a few years ago, maybe three or four 27:11 years ago, it was mentioned about something 27:12 that Nike was doing, but there was no mention 27:13 of the lawsuit. 27:14 Q. And when you say it was 27:15 mentioned, who mentioned something? 27:16 A. The president of Lontex. 27:17 Q. Who is that? 27:18 A. Efraim Nathan. 27:19 Q. What did he mention at the 27:20 time? 27:21 A. That Nike was using one of his 27:22 trademarked names. 27:23 Q. What else did he say about this 27:24 supposed use of one of his trademark names? 27:25 A. Nothing really else. That was 28:1 really the extent of it. 28:2 Q. Do you recall what that 28:3 trademark name was? 28:4 A. It was Cool Compression.	Bechtel.3

Bechtel-Nike Initials + Lontex Counters

Page/Line	Source	ID
29:14 - 30:17	<p>Bechtel, Benjamin 01-10-2020 (00:01:22)</p> <p>29:14 Q. So you said, then, there was</p> <p>29:15 some reference to marketing materials. What</p> <p>29:16 did that mean?</p> <p>29:17 A. My company works with his</p> <p>29:18 online marketing, so we work with social</p> <p>29:19 media, search engine optimization, ads on</p> <p>29:20 Google, so we work with promoting his</p> <p>29:21 products on those platforms.</p> <p>29:22 Q. So what was the discussion with</p> <p>29:23 regard to marketing materials in Cool</p> <p>29:24 Compression related to that conversation you</p> <p>29:25 recall having a couple of years ago?</p> <p>30:1 A. A couple -- you know, in that</p> <p>30:2 time frame, it was the usage of the name with</p> <p>30:3 his -- I don't know the exact which one it</p> <p>30:4 was, the trademark, the registered copyright,</p> <p>30:5 whichever one it was, the mark that goes</p> <p>30:6 along with it, but it was the conversation of</p> <p>30:7 utilizing that as -- you know, more in his</p> <p>30:8 marketing material.</p> <p>30:9 Q. So what exactly did he want to</p> <p>30:10 use more in his marketing materials?</p> <p>30:11 A. Cool Compression.</p> <p>30:12 Q. Well, had he ever used it in</p> <p>30:13 his marketing materials before that time to</p> <p>30:14 your knowledge?</p> <p>30:15 A. Not consistently. We had</p> <p>30:16 mentioned it before, along with his other</p> <p>30:17 brand or the brand Sweat It Out.</p>	Bechtel.4
33:2 - 33:7	<p>Bechtel, Benjamin 01-10-2020 (00:00:18)</p> <p>33:2 So what I'm trying to drill down</p> <p>33:3 on is whether you can recall ever seeing a</p> <p>33:4 single piece of material, whether digitally</p> <p>33:5 or in print, where you saw the words "Cool</p> <p>33:6 Compression" prior to that conversation you</p> <p>33:7 had with Mr. Nathan a couple of years ago.</p>	Bechtel.5
33:9 - 33:14	<p>Bechtel, Benjamin 01-10-2020 (00:00:11)</p> <p>33:9 THE WITNESS: I can't or I</p> <p>33:10 cannot -- I cannot recall or I can</p>	Bechtel.6

Bechtel-Nike Initials + Lontex Counters

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33:11	recall either seeing or not seeing.	
33:12	That's what I'm saying. I couldn't	
33:13	tell you if I -- if there was one or	
33:14	not.	
33:24 - 34:4	Bechtel, Benjamin 01-10-2020 (00:00:12)	Bechtel.7
33:24	Q. (BY MS. DURHAM) So let's just	
33:25	be clear for the record: You can never	
34:1	recall seeing a printed paper that said Cool	
34:2	Compression on it prior to this conversation	
34:3	you had with Mr. Nathan a couple of years	
34:4	ago; correct?	
34:7 - 34:8	Bechtel, Benjamin 01-10-2020 (00:00:02)	Bechtel.8
34:7	THE WITNESS: I don't remember	
34:8	one, no.	
39:3 - 40:8	Bechtel, Benjamin 01-10-2020 (00:01:23)	Bechtel.9
39:3	Q. Okay. It says here you're the	DX806.1
39:4	vice president of digital marketing for	DX806.1.1
39:5	1SEO.com. Is that your current title?	
39:6	A. Yes.	
39:7	Q. And it looks like maybe prior	
39:8	to being vice president of digital marketing,	
39:9	you were senior project manager?	DX806.1.2
39:10	A. Yes.	
39:11	Q. So what did you do for the	
39:12	company as senior project manager?	
39:13	A. Primarily work with our clients	
39:14	in regards to their marketing programs.	
39:15	Q. And so what types of things	DX806.1.3
39:16	would you do in terms of working with	
39:17	marketing programs?	
39:18	A. Specifically we would, you	
39:19	know, work on strategies. We would work, you	
39:20	know, on certain tasks within the program.	
39:21	We would report on the data that has been	
39:22	accumulated and, you know, how they're, for	
39:23	example, traffic to their website, that type	
39:24	of thing.	
39:25	Q. So what are the goals of these	DX806.1.4
40:1	programs that you work on with clients, or	
40:2	did at that time?	

Bechtel-Nike Initials + Lontex Counters

Page/Line	Source	ID
	40:3 A. The goals of the programs are	
	40:4 to increase traffic in business for business	
	40:5 owners.	
	40:6 Q. To their websites, primarily,	clear
	40:7 or to other places as well?	
	40:8 A. Primarily their website.	
42:25 - 43:4	Bechtel, Benjamin 01-10-2020 (00:00:13)	Bechtel.10
	42:25 Q. So I believe we discussed	
	43:1 earlier that 1SEO's involvement with Lontex	
	43:2 began in 2011; is that correct?	
	43:3 A. I believe that is accurate,	
	43:4 yes.	
44:12 - 44:19	Bechtel, Benjamin 01-10-2020 (00:00:18)	Bechtel.11
	44:12 Q. What was the structure of the	
	44:13 relationship? Was it contract-based or --	
	44:14 A. Yes.	
	44:15 Q. And what was the nature of the	
	44:16 contracted services?	
	44:17 A. At the time, the contract was,	
	44:18 you know, for website work, marketing	
	44:19 program.	
48:22 - 50:13	Bechtel, Benjamin 01-10-2020 (00:02:02)	Bechtel.12
	48:22 Q. What does maintenance of the	
	48:23 website include?	
	48:24 A. Updates to the website. For	
	48:25 example, changing a photo.	
	49:1 Q. Anything else?	
	49:2 A. It depends on what is needed.	
	49:3 It's a case-by-case situation.	
	49:4 Q. What does the SEO program work	
	49:5 include?	
	49:6 A. That includes optimization of	
	49:7 the keywords that were originally selected,	
	49:8 and helping the client to be relevant for	
	49:9 those.	
	49:10 Q. When you say "optimization of	
	49:11 the keywords that were originally selected,"	
	49:12 who originally selected keywords?	
	49:13 A. It was a process between the	
	49:14 company, 1SEO, and the client, Mr. Nathan.	

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49:15 Q. When you say "originally
 49:16 selected," what are you referring to?
 49:17 A. At the beginning of our
 49:18 programs, the optimization includes what the
 49:19 clients desire to be -- desire to target.
 49:20 Within the next steps involves
 49:21 research, to see what are appropriate terms
 49:22 based off of search volume competition, those
 49:23 types of things.
 49:24 And then the next step in the
 49:25 process is the client and my company going
 50:1 through those keywords together to determine
 50:2 what would be the best ones to move forward
 50:3 with or at least to focus on.
 50:4 Q. So have the keywords that
 50:5 Lontex has used over time changed?
 50:6 A. There has been some, yes.
 50:7 Q. What changes can you recall?
 50:8 A. The ones I can recall regard
 50:9 specific terms like Cool Max, and I believe
 50:10 the other one was Invista.
 50:11 Q. What do you recall about those?
 50:12 A. We took them out of the keyword
 50:13 list that we had.

51:6 - 51:8

Bechtel, Benjamin 01-10-2020 (00:00:05)

Bechtel.13

51:6 Q. Any other changes that you can
 51:7 recall?

51:8 A. Nothing major, no.

51:19 - 51:22

Bechtel, Benjamin 01-10-2020 (00:00:08)

Bechtel.14

51:19 Q. What do you do for Lontex? Do
 51:20 you do a blog?

51:21 A. I know we do a blog. I believe
 51:22 we do press releases as well.

55:4 - 55:10

Bechtel, Benjamin 01-10-2020 (00:00:17)

Bechtel.15

55:4 Q. Well, let me just clarify. So
 55:5 you said that last year you talked about a
 55:6 website redesign; is that correct?
 55:7 Or a new website.
 55:8 A. Correct.
 55:9 Q. And has that work begun yet?

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55:19 - 56:3	<p>55:10 A. Yes.</p> <p>Bechtel, Benjamin 01-10-2020 (00:00:32)</p> <p>55:19 Q. And why was a new website</p> <p>55:20 developed?</p> <p>55:21 A. Multiple reasons.</p> <p>55:22 Q. What are the multiple reasons?</p> <p>55:23 A. One being the website itself</p> <p>55:24 being extremely outdated, the current web</p> <p>55:25 site, in terms of the actual coding, being</p> <p>56:1 mobile friendly, being able to make updates</p> <p>56:2 which help with the optimization and the</p> <p>56:3 results that we get.</p>	Bechtel.16
56:12 - 56:17	<p>Bechtel, Benjamin 01-10-2020 (00:00:20)</p> <p>56:12 Q. What aspects are outdated?</p> <p>56:13 A. For example, the platform. The</p> <p>56:14 version that the platform is using is</p> <p>56:15 outdated. And to update it could cause</p> <p>56:16 potential problems in terms of things</p> <p>56:17 breaking on the current site.</p>	Bechtel.17
58:2 - 58:9	<p>Bechtel, Benjamin 01-10-2020 (00:00:24)</p> <p>58:2 Q. Thank you. So just to be</p> <p>58:3 clear, 1SEO built the current Sweat It Out</p> <p>58:4 website on Magento; is that correct?</p> <p>58:5 A. Correct.</p> <p>58:6 Q. And when did they build that</p> <p>58:7 website originally?</p> <p>58:8 A. The completion of it, I</p> <p>58:9 believe, was 2012.</p>	Bechtel.18
59:3 - 59:17	<p>Bechtel, Benjamin 01-10-2020 (00:00:41)</p> <p>59:3 Q. And I believe you told me a</p> <p>59:4 moment ago that the website is not mobile</p> <p>59:5 friendly; is that correct?</p> <p>59:6 A. Correct.</p> <p>59:7 Q. What does it mean it's not</p> <p>59:8 "mobile friendly"?</p> <p>59:9 A. If you were to view it on a</p> <p>59:10 mobile device -- you know, I'm sure everyone</p> <p>59:11 here has a mobile device, but you would</p> <p>59:12 notice the content is very small; the picture</p> <p>59:13 is very small. It's not conducive to viewing</p>	Bechtel.19

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<p>59:14 on a mobile device, whereas most websites 59:15 today you'll see the images are very big and 59:16 clear. The content is going to respond and 59:17 appear based off of the size of the device.</p> <p>60:14 - 61:10</p>	<p>Bechtel, Benjamin 01-10-2020 (00:00:58)</p> <p>60:14 Q. Can they process a credit card 60:15 transaction on the website? 60:16 A. I don't believe currently. I 60:17 believe that was removed. 60:18 Q. Okay. So I can't go onto the 60:19 website and put my credit card in and buy a 60:20 product; is that correct? 60:21 A. I don't know exactly. I think 60:22 you can through PayPal still. 60:23 Q. And why do you believe that the 60:24 credit card capability was stopped? 60:25 A. Because of the functionality of 61:1 the website and the API connection, which is 61:2 basically the two languages talking to each 61:3 other of -- the website and the processing 61:4 platform, the merchant account, talking to 61:5 each other. Again, the website being 61:6 outdated was not -- you know, was not a good 61:7 connection, so we made the change. 61:8 Q. Okay. So how long has it been, 61:9 then, that there is no credit card capability 61:10 on the website?</p>	<p>Bechtel.20</p>
<p>61:13 - 61:14</p>	<p>Bechtel, Benjamin 01-10-2020 (00:00:02)</p> <p>61:13 THE WITNESS: I don't know 61:14 exactly how long.</p>	<p>Bechtel.21</p>
<p>63:18 - 63:24</p>	<p>Bechtel, Benjamin 01-10-2020 (00:00:12)</p> <p>63:18 Q. (BY MS. DURHAM) But you don't 63:19 know how long the credit card capacity -- 63:20 capability lasted? 63:21 A. An exact time frame, no. 63:22 Q. Can you narrow it down to any 63:23 time period? 63:24 A. Honestly, no.</p>	<p>Bechtel.22</p>
<p>68:17 - 68:19</p>	<p>Bechtel, Benjamin 01-10-2020 (00:00:08)</p> <p>68:17 Q. And what about other</p>	<p>Bechtel.23</p>

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68:21 - 70:7

68:18 optimization issues that you believe exist
68:19 with the sweatitout.com website?

Bechtel, Benjamin 01-10-2020 (00:01:34)

Bechtel.24

68:21 THE WITNESS: When you look at
68:22 optimizations, Google and the other
68:23 search engines read information on the
68:24 site. They read information off the
68:25 site. They look at over 200 different
69:1 factors when they look at a site and
69:2 give it relevancy, give it importance,
69:3 give it some form of a ranking, right?
69:4 So when you look at a site,
69:5 current web site, for example Sweat It
69:6 Out, where it has outdated
69:7 information, Google is not able to see
69:8 that information as well as a current
69:9 up-to-date site. It's kind of like --
69:10 I'm going to go back to a car again.
69:11 It's kind of like you're going to put
69:12 a 2017, let's say a Nissan Maxima,
69:13 against a 1985 Datsun. I can tell you
69:14 who's going to win just based off of
69:15 how they function.
69:16 Now, if it's the same year car,
69:17 then you're just looking at models,
69:18 you're looking at the different bells
69:19 and whistles, the engines, that kind
69:20 of thing, more details. But when
69:21 Google looks at something that they
69:22 can't get through cleanly, it slows
69:23 them down. So when it slows them
69:24 down, they're not able to give you as
69:25 much credibility as you deserve, if
70:1 that makes sense.
70:2 Q. (BY MS. DURHAM) It does. And
70:3 when you say it doesn't give you as much
70:4 credibility as you deserve, it means you're
70:5 not going to show up as high in organic
70:6 search, for example?
70:7 A. That's an example.

Bechtel-Nike Initials + Lontex Counters

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71:20 - 72:3	Bechtel, Benjamin 01-10-2020 (00:00:27) 71:20 Q. Did 1SEO at any time manage any 71:21 of the social media accounts for Lontex? 71:22 A. Yes. 71:23 Q. Which social media accounts did 71:24 it manage? 71:25 A. I don't recall exactly, but 72:1 Twitter, Facebook, I would say are the two 72:2 main ones, but I don't remember exactly the 72:3 scope of it at that time.	Bechtel.25
72:4 - 72:7	Bechtel, Benjamin 01-10-2020 (00:00:08) 72:4 Q. Have you done anything for 72:5 Lontex with respect to digital marketing of 72:6 products on Amazon? 72:7 A. No.	Bechtel.26
82:7 - 82:10	Bechtel, Benjamin 01-10-2020 (00:00:05) 82:7 Q. (BY MS. DURHAM) I just want 82:8 you to characterize how you would -- what you 82:9 think about the volume to the sweatitout.com 82:10 website.	Bechtel.27
82:14 - 82:18	Bechtel, Benjamin 01-10-2020 (00:00:11) 82:14 THE WITNESS: There's a lot of 82:15 potential for more, which is why we're 82:16 building a new website, so we can look 82:17 to get more as well as do additional 82:18 programs such as the ad words again.	Bechtel.28
90:25 - 91:12	Bechtel, Benjamin 01-10-2020 (00:00:33) 90:25 Q. (BY MS. DURHAM) Mr. Bechtel, 91:1 over the time period that you've worked on 91:2 sweatitout.com, have you done any -- have you 91:3 optimized the website for anything in 91:4 particular? 91:5 A. In terms of searches? 91:6 Q. Correct. 91:7 A. Yes, the previously mentioned 91:8 keyword list is what we would optimize for. 91:9 Q. So that -- those keyword lists 91:10 used throughout the years were what was 91:11 primarily used for an optimization strategy? 91:12 A. Yes.	Bechtel.29

Bechtel-Nike Initials + Lontex Counters

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92:21 - 93:8	Bechtel, Benjamin 01-10-2020 (00:00:51)	Bechtel.30
92:21	Q. (BY MS. DURHAM) So,	
92:22	Mr. Bechtel, I'm handing you what's been	DX19.1
92:23	marked Exhibit 254. It is labeled at the	
92:24	bottom 1SEO_EDPA_7077. And that is an e-mail	
92:25	string. And then also there is an attachment	
93:1	to the e-mail that is labeled 7079.	
93:2	Do you see those labels on the	
93:3	document?	
93:4	A. Yes.	
93:5	Q. Let's start with the e-mail	DX19.1.1
93:6	that's on top. Do you recognize this as a	
93:7	communication that you had about Lontex?	DX19.1.2
93:8	A. Yes, that's what it looks like.	
93:14 - 95:12	Bechtel, Benjamin 01-10-2020 (00:02:25)	Bechtel.31
93:14	Q. And that's your e-mail there,	
93:15	the bbechtel@1seo.com?	
93:16	A. Yes.	
93:17	Q. And do you see here the subject	
93:18	is Sweat It Out Keyword list?	DX19.1.3
93:19	A. Yes.	
93:20	Q. And it looks like -- this was	
93:21	Mr. Nathan that you were corresponding with,	DX19.1.4
93:22	based on the signature block; correct?	
93:23	A. Yes.	
93:24	Q. And he says -- actually, let's	
93:25	go down to the original e-mail, because it	DX19.1.5
94:1	looks like the e-mail at the top of the page,	
94:2	Mr. Nathan was responding to an e-mail that	
94:3	you had written to him earlier that day,	
94:4	February 22nd, 2018; is that correct?	
94:5	A. Yes.	
94:6	Q. Okay. And you said in that	
94:7	e-mail, for the subject line Sweat It Out	
94:8	Keyword list: See attached.	DX19.1.6
94:9	And then we see here the	
94:10	attachment at 7079; correct?	DX19.4
94:11	A. I believe if that was the	
94:12	attachment then that would be it.	
94:13	Q. Okay. So -- and it looks like	

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Page/Line	Source	ID
	94:14 Mr. Nathan then responded back to you and	DX19.1.4
	94:15 said: We are returning back to you the	DX19.1.7
	94:16 attached spreadsheet. Column #1 is the list	DX19.1.8
	94:17 you sent to us that you have been using.	
	94:18 Column #2 is the list of changes and some	DX19.1.9
	94:19 additions. The additions are the cool	DX19.1.10
	94:20 compression keywords we talked about this	
	94:21 morning-URGENT.	
	94:22 Did I read that correctly?	
	94:23 A. That's how I'm reading it.	
	94:24 Q. Well, let's refer to the	
	94:25 attachment and look at column one.	DX19.4
	95:1 Do you see that the header from	
	95:2 that column is keywords from 1seo	DX19.4.1
	95:3 February 2018?	
	95:4 A. Yes.	
	95:5 Q. Is this a document that you	
	95:6 created or someone at 1SEO created?	
	95:7 A. I don't recall, but if you're	
	95:8 saying this was what is attached, then it	
	95:9 would have been.	
	95:10 Q. And do you see that keyword	
	95:11 list from 1seo February 2018 does not include	
	95:12 any reference to Cool Compression, does it?	
95:14 - 96:7	Bechtel, Benjamin 01-10-2020 (00:01:03)	Bechtel.32
	95:14 THE WITNESS: I do see that.	
	95:15 Q. (BY MS. DURHAM) But column	
	95:16 two, which, as Mr. Nathan says, is the list	DX19.4.2
	95:17 of changes and some additions, now that does	
	95:18 include Cool Compression.	
	95:19 Do you see that?	
	95:20 A. I do.	
	95:21 Q. And, in fact, at the bottom of	
	95:22 column two it says: NEW TO ADD URGENT. And	DX19.5.1
	95:23 then we see cool compression shorts, cool	DX19.5.2
	95:24 compression tights, cool compression shirts,	
	95:25 cool compression pants, buy cool compression	
	96:1 shirts, buy cool compression tights, buy cool	
	96:2 compression shirts, and buy cool compression	
	96:3 pants.	

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Page/Line	Source	ID
96:9 - 96:15	<p>96:4 So what is your understanding</p> <p>96:5 of why these Cool Compression keywords were</p> <p>96:6 urgently added by Mr. Nathan in a revised</p> <p>96:7 list of keywords in February of 2018?</p> <p>Bechtel, Benjamin 01-10-2020 (00:00:18)</p> <p>96:9 THE WITNESS: My understanding</p> <p>96:10 is that we were removing Cool Max and</p> <p>96:11 anything Invista, and adding in</p> <p>96:12 different keywords, revised keywords.</p> <p>96:13 Q. (BY MS. DURHAM) And, in fact,</p> <p>96:14 here the "new to add" were the Cool</p> <p>96:15 Compression keywords, weren't they, sir?</p>	Bechtel.33
96:17 - 96:18	<p>Bechtel, Benjamin 01-10-2020 (00:00:02)</p> <p>96:17 THE WITNESS: That's what it</p> <p>96:18 looks like, according to this.</p>	Bechtel.34
96:21 - 97:11	<p>Bechtel, Benjamin 01-10-2020 (00:00:49)</p> <p>96:21 Q. (BY MS. DURHAM) Mr. Bechtel,</p> <p>96:22 showing you what's been marked Exhibit 255,</p> <p>96:23 this appears to be another e-mail</p> <p>96:24 communication between Mr. Nathan and someone</p> <p>96:25 named Bill Leifholtz?</p> <p>97:1 Do you know who this is?</p> <p>97:2 A. Yes.</p> <p>97:3 Q. Who is he?</p> <p>97:4 A. He was a content writer at</p> <p>97:5 1SEO.</p> <p>97:6 Q. Okay. What responsibility did</p> <p>97:7 he have with respect to the Lontex</p> <p>97:8 sweatitout.com account?</p> <p>97:9 A. I believe at this time his</p> <p>97:10 duties included writing blogs and press</p> <p>97:11 releases.</p>	<p>Bechtel.35</p> <p>DX20.1</p> <p>DX20.1.1</p> <p>DX20.1.2</p>
97:12 - 98:13	<p>Bechtel, Benjamin 01-10-2020 (00:01:30)</p> <p>97:12 Q. And do you see here on the</p> <p>97:13 first page, 7333, there's an e-mail dated</p> <p>97:14 March 8, 2018 at 3:00 p.m. where Mr. Nathan</p> <p>97:15 wrote to Bill and said: Please add after</p> <p>97:16 every "SWEAT IT OUT" this phrase IN CAPITAL</p> <p>97:17 LETTERS WITH THE "circle R," "COOL</p> <p>97:18 COMPRESSION" and then send back over for me</p>	<p>Bechtel.36</p> <p>DX20.1.3</p> <p>DX20.1.4</p>

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	97:19 to review.	
	97:20 Did I read that correctly?	
	97:21 A. Yes.	
	97:22 Q. And do you see what Bill said	DX20.1.5
	97:23 in return? He responded on March 8, 2018 and	
	97:24 he said: Hey Efraim, I went in and added	DX20.1.6
	97:25 sweatitout.com COOL COMPRESSION throughout	
	98:1 the PR and blog. I attached both documents	
	98:2 to this e-mail and will have my team post	
	98:3 them once they're approved.	
	98:4 Did I read that correctly?	
	98:5 A. No. It's SWEAT IT OUT, not	
	98:6 sweatitout.com that's labeled there. But	
	98:7 other than that, it would be correct.	
	98:8 Q. Okay. Thank you for that	
	98:9 correction.	
	98:10 So do you understand from this	
	98:11 e-mail that Bill was adding that phrase,	
	98:12 Sweat It Out Cool Compression throughout the	
	98:13 PR and blog as of March 8, 2018?	
98:16 - 98:17	Bechtel, Benjamin 01-10-2020 (00:00:02)	Bechtel.37
	98:16 THE WITNESS: That's what it	
	98:17 appears to -- from this.	
100:23 - 101:2	Bechtel, Benjamin 01-10-2020 (00:00:16)	Bechtel.38
	100:23 Pursuant to this e-mail that	
	100:24 Bill sent to Mr. Nathan on March 8, 2018,	
	100:25 that is when he added this phrase, Sweat It	
	101:1 Out Cool Compression throughout the PR and	
	101:2 blog; is that correct?	
101:4 - 101:19	Bechtel, Benjamin 01-10-2020 (00:00:45)	Bechtel.39
	101:4 THE WITNESS: That's what it	
	101:5 appears to me.	
	101:6 Q. (BY MS. DURHAM) And you have	
	101:7 no reason to doubt that that is actually the	
	101:8 case; correct?	
	101:9 A. That's what it looks like to me	
	101:10 from what is read here.	
	101:11 Q. And, in fact, it looks like	
	101:12 Mr. Nathan responded on March 8th of 2018 to	DX20.1.7
	101:13 Bill, and he said: Excellent! Run it..thank	

Page/Line	Source	ID
	101:14 you.	
	101:15 Does that mean that he was	
	101:16 giving Bill authorization to now include that	
	101:17 new phrase throughout the PR and the blog?	
	101:18 A. I read that as he's giving him	
	101:19 approval to post the blog and publish the PR.	
110:25 - 112:11	Bechtel, Benjamin 01-10-2020 (00:01:57)	Bechtel.40
	110:25 Q. (BY MS. DURHAM) So this looks	DX17.1
	111:1 to be another e-mail string that you	
	111:2 exchanged with Lontex, this time in May of	DX17.1.1
	111:3 2019; is that correct?	
	111:4 A. That is what it looks like,	
	111:5 correct.	
	111:6 Q. Well, let's start with what I	DX17.3.1
	111:7 believe is the original, or the first e-mail	
	111:8 in the string that's on 6911. It's the	
	111:9 e-mail you sent on May 6, 2019 at 10:48 p.m.	
	111:10 The subject is Sweat It Out Home Page Design.	
	111:11 A. Okay.	
	111:12 Q. You say: Hello Efraim &	DX17.3.2
	111:13 Samantha. I hope you are both having a good	DX17.3.3
	111:14 week. I have attached the home page design	DX17.3.4
	111:15 for the new website for your review.	
	111:16 And then it looks like you've	
	111:17 attached some potential images for the new	DX17.4.1
	111:18 website; is that correct?	
	111:19 A. This is one image,	
	111:20 specifically, of what -- the portrayal of the	
	111:21 new website design.	
	111:22 Q. Okay. So would this be for --	
	111:23 I think you said the home page; correct?	
	111:24 A. Correct.	
	111:25 Q. And how did you pull together	
	112:1 this information for the proposed home page?	
	112:2 A. This was based off of my	
	112:3 meeting with the client as well as developers	
	112:4 within my company, which was then developed	
	112:5 by my team of developers based off of that	
	112:6 feedback and, you know, what we were looking	
	112:7 at before from a design standpoint.	

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112:8	Q. And you didn't reference Cool	
112:9	Compression anywhere on this proposed home	
112:10	page, did you?	
112:11	A. I don't see it there.	
112:21 - 113:20	Bechtel, Benjamin 01-10-2020 (00:01:29)	Bechtel.41
112:21	Q. So on May 17th, 2019 at	DX17.2.1
112:22	12:58 p.m., it looks like Lontex wrote you	
112:23	back and said: Hi Ben: Thanks very	
112:24	much--some good things here on the prototype.	
112:25	PLEASE NOTE: Attached is our COOL	DX17.2.2
113:1	COMPRESSION logo--two different file types.	
113:2	Please -- or Use the best one.	
113:3	And then he says: WHEREVER THE	DX17.2.3
113:4	SWEAT IT OUT SUN LOGO IS, WE NEED TO ALSO ADD	
113:5	COOL COMPRESSION LOGO.	
113:6	What was your understanding of	
113:7	what Mr. Nathan was conveying to you in that	
113:8	e-mail?	
113:9	A. My understanding is that he	
113:10	wanted the Cool Compression logo to sit next	
113:11	to the Sweat It Out logo.	
113:12	Q. And on May 17th, 2019, it looks	DX17.1.2
113:13	like you thanked him for the feedback. You	
113:14	said you'd update it.	
113:15	And then it looks like you	DX17.1.3
113:16	e-mailed further, on May 31st, 2019, and	
113:17	provided an updated design where you say:	
113:18	Please see the updated design with the COOL	
113:19	COMPRESSION logo as well; is that correct?	
113:20	A. Yes.	
114:11 - 114:16	Bechtel, Benjamin 01-10-2020 (00:00:16)	Bechtel.42
114:11	Q. All right. Well, when, if	
114:12	ever, before that did you ever apply that	
114:13	Cool Compression logo with that man design to	
114:14	the sweatitout.com website?	
114:15	A. I don't think we did implement	
114:16	it to the website.	
116:20 - 119:9	Bechtel, Benjamin 01-10-2020 (00:03:56)	Bechtel.43
116:20	Q. (BY MS. DURHAM) Showing you	
116:21	what's marked Exhibit 261, I see here an	DX31.1

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116:22 e-mail string that appears to be from someone

DX31.1.1

116:23 named Britt Rawcliffe. And it looks like

116:24 it's -- one of the e-mails is to you, and

DX31.1.2

116:25 then there's somebody named BJ Bergey and

DX31.1.3

117:1 Nikki Violi and Dylan Varian copied.

117:2 Is this an e-mail that was

117:3 exchanged internally within 1SEO?

117:4 A. Yes.

117:5 Q. Who is Britt Rawcliffe?

117:6 A. Britt is one of our team

117:7 leaders, who is also -- assists in

117:8 photography as well as social media.

117:9 Q. So it looks like she --

117:10 Let's start, actually, up in

117:11 the beginning. On page 25525, it looks like

DX31.3.1

117:12 you wrote to Britt on June 24, 2019; is that

DX31.3.2

117:13 correct?

117:14 A. Yes, that's what it looks like.

117:15 Q. And what were you trying to

117:16 communicate to Britt in this e-mail here from

117:17 June of 2019?

117:18 A. This was -- I was communicating

117:19 to the team about using new images on the

117:20 website, and their thoughts based off of

117:21 their experience in the photography and

117:22 videography world that they have on what they

117:23 thought about moving forward, the ability to

117:24 use existing photos -- or, yeah, photos on

117:25 the existing site for the new site, and also

118:1 having new ones created or shot for the new

118:2 website.

118:3 Q. And at one point in this e-mail

118:4 you say: There were some photos they had

DX31.3.3

118:5 taken and I think they are pretty bad

118:6 honestly.

118:7 Are you referring to images --

118:8 or photos that Lontex had taken?

118:9 A. Yes.

118:10 Q. It looks like Britt then

118:11 responded to you on June 24th of 2019 and

DX31.1.4

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Page/Line	Source	ID
	118:12 gave you some further feedback; is that	
	118:13 correct?	
	118:14 A. Yes.	
	118:15 Q. And she says: Here are my	DX31.1.5
	118:16 thoughts -- you definitely want someone to	
	118:17 model these. No mannequins. The images they	
	118:18 have on their site are pretty terrible and	DX31.1.6
	118:19 wildly inconsistent. If they are springing	
	118:20 for a beautiful new site, they definitely	
	118:21 want to enhance it with fresh images.	
	118:22 Did I read that correctly?	
	118:23 A. Yes.	
	118:24 Q. And then it looks like you	
	118:25 provide her some further feedback, again on	DX31.1.7
	119:1 June 24th, where you say: That would be great	DX31.1.8
	119:2 and I agree with you. We can talk in more	
	119:3 detail if the client moves forward, but his	
	119:4 target audience is a little different than	
	119:5 the normal under armor or nike type crowd,	
	119:6 he's really focusing on athletes and the real	
	119:7 benefits of the product he has.	
	119:8 Did I read that correctly?	
	119:9 A. Yes.	
124:11 - 124:13	Bechtel, Benjamin 01-10-2020 (00:00:07)	Bechtel.44
	124:11 Q. (BY MS. DURHAM) Showing you	
	124:12 what's been marked Exhibit 263, can you	DX8.1
	124:13 describe to me what this document is?	DX8.1.1
124:14 - 124:19	Bechtel, Benjamin 01-10-2020 (00:00:16)	Bechtel.45
	124:14 [Document review.]	
	124:15 A. This looks like a report from	
	124:16 what we used back in the very early days of	DX8.1.1
	124:17 the company -- and I see it was dated 2012,	
	124:18 so I was correct in that -- that were sent	
	124:19 and produced.	
124:24 - 125:2	Bechtel, Benjamin 01-10-2020 (00:00:07)	Bechtel.46
	124:24 Q. So this is something that 1SEO	
	124:25 then created for sweatitout.com in 2012; is	
	125:1 that correct?	
	125:2 A. Yes.	
129:21 - 129:22	Bechtel, Benjamin 01-10-2020 (00:00:06)	Bechtel.47

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Page/Line	Source	ID
	129:21 Q. Let's look back at, then,	DX8.37
	129:22 page 37 of 47 in the report.	
129:23 - 131:15	Bechtel, Benjamin 01-10-2020 (00:01:57)	Bechtel.48
	129:23 This portion of the report has	DX8.37.1
	129:24 some language that says SERP Tracker Report,	DX8.37.4
	129:25 and then Ranking Results. What does that	
	130:1 mean?	
	130:2 A. Search Engine Results Page is	
	130:3 what SERP stands for. And in previous	
	130:4 reporting we used to track the actual	
	130:5 ranking, because it basically existed.	
	130:6 It's extremely difficult to	
	130:7 track now, based off a lot of factors within	
	130:8 Google and the algorithms, so whole 'nother	
	130:9 story.	
	130:10 So in this case, at the time,	
	130:11 this tracked what position certain phrases	
	130:12 appeared in the search engine result,	
	130:13 specifically Google.	
	130:14 Q. For sweatitout.com?	
	130:15 A. In this page, yes.	
	130:16 Q. What does this Average Rank	DX8.37.2
	130:17 mean, 34, and then in parens 44 percent	
	130:18 ranked?	
	130:19 A. That percentage -- that number	
	130:20 is the number of keywords listed there, and	
	130:21 the percentages percent ranked in the top 100	
	130:22 positions.	
	130:23 Q. And what are -- where did the	
	130:24 keywords that are listed here come from?	DX8.37.3
	130:25 A. The keywords were created and	
	131:1 addressed in the same process described	
	131:2 before, where the client provides	
	131:3 information, you know, terms that are	
	131:4 important to them. We go through as a	
	131:5 company, research in different aspects, and	
	131:6 then collaborate on that final list is what	
	131:7 we use in the optimization, which is what	
	131:8 we're seeing here.	
	131:9 Q. Okay. So this was a list of	

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131:10 the company's keywords for sweatitout.com in

131:11 2012?

131:12 A. Yes.

131:13 Q. And Cool Compression is not

131:14 here, is it?

131:15 A. I do not see it there.

135:21 - 137:3

Bechtel, Benjamin 01-10-2020 (00:01:29)

Bechtel.49

135:21 Q. Let's look at page 43 of 47.

DX8.43

135:22 This is a report about landing

135:23 pages. What does this generally report on?

DX8.43.1

135:24 A. Landing pages means the page of

135:25 the website that the end user came to the

136:1 site on.

136:2 Q. And I see a number of URLs for

DX8.43.2

136:3 those landing pages. How are those URLs

136:4 generated?

136:5 A. A URL of a page is generated

136:6 when the page is created for a specific

136:7 product. So that's just based off of what's

136:8 on the site.

136:9 Q. So does -- I mean, and this is

136:10 not my world, so you'll have to explain it to

136:11 me. Does somebody actually select the words

136:12 that go into the URL, or does it happen

136:13 through an algorithm? How does it work?

136:14 A. That's part of the optimization

136:15 and the optimization of the keywords.

136:16 So if you have -- you can see

136:17 wicking underwear at this time was a -- you

136:18 know, one of the top ones not only searched

136:19 but also they came to the page. So when they

136:20 searched wicking underwear, the page most

136:21 relevant was the wicking underwear page.

136:22 So that was the one that came

136:23 up in the search engines, not the -- the home

136:24 page doesn't come up for everything. So the

136:25 wicking underwear page came up for those

137:1 searches, and that's how they entered into

137:2 the site or landed on the site, through that

137:3 page itself.

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Page/Line	Source	ID
138:5 - 138:8	Bechtel, Benjamin 01-10-2020 (00:00:32)	Bechtel.50
138:5	Q. And if I look through these	DX8.44
138:6	landing pages, I don't see any reference to	DX8.45
138:7	Cool Compression; is that correct?	DX8.46
138:8	A. I do not see any.	DX8.47
138:11 - 139:1	Bechtel, Benjamin 01-10-2020 (00:00:49)	Bechtel.51
138:11	Q. (BY MS. DURHAM) Showing you	
138:12	what's been marked Exhibit 264, what is this	DX9.1
138:13	document?	
138:14	A. This looks like another report	
138:15	similar to the previous one.	
138:16	Q. Okay. So I guess I would be	
138:17	able to read it the same way as we just	
138:18	talked about in the previous document?	
138:19	A. Yes.	
138:20	Q. Okay. And so is this for a	
138:21	date range of June 2012, based on the	
138:22	information in this report?	
138:23	A. That is what it looks like.	
138:24	Q. And if I look at the keywords	DX9.33
138:25	listed on pages 33 and 34, I don't see Cool	
139:1	Compression anywhere there, do I?	DX9.34
139:3 - 139:4	Bechtel, Benjamin 01-10-2020 (00:00:01)	Bechtel.52
139:3	THE WITNESS: I do not see it	
139:4	there.	
143:1 - 144:6	Bechtel, Benjamin 01-10-2020 (00:01:25)	Bechtel.53
143:1	Q. (BY MS. DURHAM) I'm showing	
143:2	you what's been marked Exhibit 266. Is this	DX13.1
143:3	a printout of a communication from 1SEO's	DX13.1.1
143:4	Base Camp system?	
143:5	A. Yes, that's what it looks like.	
143:6	Q. And it looks like it's a	
143:7	communication from May 2012; is that correct?	DX13.1.2
143:8	A. Yes, that is what it looks	
143:9	like.	
143:10	Q. And I see this checkmark, and	DX13.1.3
143:11	then it says: For the WHOLE website, anywhere	DX13.1.4
143:12	"Sweat It Out" Appears, it must be in all	
143:13	caps like this, SWEAT IT OUT...our client	
143:14	loves caps. Everywhere SWEAT IT OUT	

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	143:15 appears -- yes, it must be in Caps, but	
	143:16 please do -- but please also have the	
	143:17 registered trademark symbol, circle R, as in:	
	143:18 SWEAT IT OUT, circle R.	
	143:19 Who wrote that?	
	143:20 A. It looks like from the printout	
	143:21 that I did, but I can't confirm without	
	143:22 seeing it in Base Camp.	
	143:23 Q. Okay. And who were you	
	143:24 communicating this information to? Who is	
	143:25 Ashish?	DX13.1.5
	144:1 A. It looks like Ashish was	
	144:2 assigned to it. He was a developer.	
	144:3 Q. There's no reference to cool	
	144:4 and compression being -- needing a trademark	
	144:5 symbol or being anywhere on the whole website	
	144:6 in this Base Camp communication, is there?	
144:8 - 144:9	Bechtel, Benjamin 01-10-2020 (00:00:02)	Bechtel.54
	144:8 THE WITNESS: I do not see it	
	144:9 anywhere here, no.	
147:13 - 148:8	Bechtel, Benjamin 01-10-2020 (00:01:23)	Bechtel.55
	147:13 Q. (BY MS. DURHAM) Looking at	
	147:14 Exhibit 268, which is an e-mail string that	DX22.1
	147:15 is Bates labeled 8137 through 8143. It's	
	147:16 quite long, so let's take it in chunks.	
	147:17 It looks like the first e-mail	DX22.3.1
	147:18 in the string is the one that begins on 8139.	
	147:19 It is dated August 19th, 2011, sent at	DX22.3.2
	147:20 2:12 p.m. from Lontex to somebody at	
	147:21 sswaim@1seo.com.	
	147:22 A. Yes, that's what it looks.	
	147:23 Q. Who is sswain@1seo?	
	147:24 A. That was Shawn Swain. At the	
	147:25 time I believe Shawn was heading up the	
	148:1 development department.	
	148:2 Q. Development of what?	
	148:3 A. Development of websites.	
	148:4 Q. So it looks like here, Lontex	
	148:5 was communicating with Shawn about certain	DX22.3.3
	148:6 domain names that he owns. Is that a fair	

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148:7	interpretation of this e-mail?	
148:8	A. Yes, that's what it looks like.	
148:18 - 149:9	Bechtel, Benjamin 01-10-2020 (00:00:58)	Bechtel.56
148:18	Q. So I see in the list of URLs	DX22.4
148:19	that there is a URL -- or a domain name,	
148:20	sorry, for Cool Compression.com and	DX22.4.1
148:21	cool-compression.com. Do you see that?	DX22.4.2
148:22	A. Yes, I do.	
148:23	Q. But I also see where Mr. Nathan	
148:24	tells Shawn that: Our main site is	DX22.3.4
148:25	www.sweatitout.com; is that correct?	
149:1	A. Yes.	
149:2	Q. And it looks like, then, you	
149:3	took over and responded to this e-mail chain	DX22.2.1
149:4	on May 22nd, 2012; is that correct?	DX22.2.2
149:5	A. That's what it looks like, yes,	
149:6	correct.	
149:7	Q. And you said: Hello Efraim, I	DX22.2.3
149:8	checked out these URLs and no one has come to	
149:9	your site from them.	
149:23 - 150:2	Bechtel, Benjamin 01-10-2020 (00:00:16)	Bechtel.57
149:23	For those domain names	
149:24	referenced on page 8140, did you in fact	
149:25	check each of them and confirm that no one	
150:1	had accessed the sweatitout.com website	
150:2	through them?	
150:4 - 150:9	Bechtel, Benjamin 01-10-2020 (00:00:06)	Bechtel.58
150:4	THE WITNESS: That's what it	
150:5	looks like.	
150:6	Q. (BY MS. DURHAM) Well, that's	
150:7	what you said in the e-mail, isn't it,	
150:8	Mr. Bechtel?	
150:9	A. In 2012, yes.	
150:24 - 151:15	Bechtel, Benjamin 01-10-2020 (00:00:59)	Bechtel.59
150:24	Q. (BY MS. DURHAM) You go on to	
150:25	say: There really is no benefit to having	DX22.2.4
151:1	these point to your site unless someone	
151:2	directly types in that url, but then when you	
151:3	see your site come up they might just close	
151:4	out of it anyway.	

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	151:5 What did you mean by that?	
	151:6 A. So I think what I meant at the	
	151:7 time, almost eight years ago, or over eight	
	151:8 years ago, you could see if somebody went to	
	151:9 a domain and then went to the site. But at	
	151:10 that time, when you redirected to a domain,	
	151:11 unless you're using it somewhere for somebody	
	151:12 to see or to use, it's not going to be out	
	151:13 there. So nobody would actually go to that	
	151:14 domain unless you're telling them to, as	
	151:15 opposed to a website where there's pages and	
151:16 - 151:18	Bechtel, Benjamin 01-10-2020 (00:00:06)	Bechtel.105
	151:16 products that exist. So, in other words, no	DX22.2.4
	151:17 one was going to Cool Compression.com or	
	151:18 cool-compression.com at this time; correct?	
151:20 - 152:25	Bechtel, Benjamin 01-10-2020 (00:01:12)	Bechtel.60
	151:20 THE WITNESS: At this time it	
	151:21 does not look like it.	
	151:22 Q. (BY MS. DURHAM) And you say:	
	151:23 In my opinion I think we should remove them	DX22.2.5
	151:24 pointing to your site and you can keep them	
	151:25 and try to sell them or whatever else you	
	152:1 want to do with them. Please let me know	
	152:2 what you would like to do so we can take	
	152:3 action. Thank you.	
	152:4 Did I read that correctly in	
	152:5 terms of the opinion you expressed to	
	152:6 Mr. Nathan at that time?	
	152:7 A. Yes, that was read correctly,	
	152:8 that was my opinion at that time.	
	152:9 Q. And, in fact, Mr. Nathan	DX22.1.1
	152:10 responded to you on May 22nd, 2012 at	DX22.1.2
	152:11 3:08 p.m., didn't he?	
	152:12 Can you see that next e-mail in	
	152:13 the string?	
	152:14 A. Yes.	
	152:15 Q. And he says: Ben: No problem,	DX22.1.3
	152:16 please remove them from pointing to	
	152:17 sweatitout.com. We will decide about future	
	152:18 uses for them later.	DX22.2.6

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	152:19 Did I read that correctly?	
	152:20 A. Yes.	
	152:21 Q. So, in other words, in May of	
	152:22 2012, Mr. Nathan had no problem with you	
	152:23 removing any redirection from Cool	
	152:24 Compression.com or cool-compression.com to	
	152:25 Sweat It Out; correct?	
153:2 - 153:3	Bechtel, Benjamin 01-10-2020 (00:00:02)	Bechtel.61
	153:2 THE WITNESS: In 2012, that is	
	153:3 correct.	
158:14 - 159:13	Bechtel, Benjamin 01-10-2020 (00:00:59)	Bechtel.62
	158:14 Q. (BY MS. DURHAM) Showing you	
	158:15 what's been marked Exhibit 270, do you know	DX43.1
	158:16 what this is, Mr. Bechtel?	
	158:17 A. Yes.	
	158:18 Q. What is it?	
	158:19 A. It looks like the ranking	DX43.1.1
	158:20 report from December -- or November 2012.	DX43.1.2
	158:21 Q. For sweatitout.com?	
	158:22 A. Yes.	
	158:23 Q. And what does this list of	
	158:24 keywords mean with respect to the ranking	
	158:25 report for sweatitout.com?	
	159:1 A. It's -- well, in reference to	
	159:2 the same report as earlier, it's the same	
	159:3 numbers in terms of where they appear in the	
	159:4 search engine results for Google	
	159:5 specifically.	
	159:6 Q. Okay. And these were the	
	159:7 keywords that were selected between Lontex	
	159:8 and your own research to try to optimize the	
	159:9 sweatitout.com page?	
	159:10 A. That's correct.	
	159:11 Q. And I don't see Cool	
	159:12 Compression anywhere on this keyword list; is	
	159:13 that correct?	
159:15 - 159:19	Bechtel, Benjamin 01-10-2020 (00:00:07)	Bechtel.63
	159:15 THE WITNESS: That's correct.	
	159:16 Q. (BY MS. DURHAM) Why isn't it	
	159:17 here?	

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Page/Line	Source	ID
159:22 - 161:2	<p>159:18 A. It does not look like it was</p> <p>159:19 part of the keywords in 2012.</p> <p>Bechtel, Benjamin 01-10-2020 (00:01:38)</p> <p>159:22 Q. (BY MS. DURHAM) Showing you</p> <p>159:23 what's been marked Exhibit 271, this is an</p> <p>159:24 e-mail labeled 34552 and 34553, and then</p> <p>159:25 there is an attachment to that e-mail that is</p> <p>160:1 34554.</p> <p>160:2 Do you see that, Mr. Bechtel?</p> <p>160:3 A. Yes.</p> <p>160:4 Q. Okay. And it looks like in the</p> <p>160:5 e-mail portion of this exhibit you had sent</p> <p>160:6 an e-mail to Lontex, again addressed to</p> <p>160:7 Efraim and Samantha, on December 10, 2012; is</p> <p>160:8 that correct?</p> <p>160:9 A. Yes.</p> <p>160:10 Q. And it says -- the subject is</p> <p>160:11 the Sweat It Out Ranking Report.</p> <p>160:12 So you say here: I have</p> <p>160:13 attached --</p> <p>160:14 Well, and I'm skipping the</p> <p>160:15 first sentence, which is some pleasantries,</p> <p>160:16 and then you say: I have attached your most</p> <p>160:17 recent ranking report and you can see that</p> <p>160:18 your keywords are continuing to rank very</p> <p>160:19 well and make significant progress. Here are</p> <p>160:20 a few keywords I'd like to highlight from the</p> <p>160:21 past month.</p> <p>160:22 You reference football sleeves,</p> <p>160:23 running compression shirt, running</p> <p>160:24 compression gear, best compression shorts for</p> <p>160:25 running, and lycra shorts.</p> <p>161:1 You don't reference any Cool</p> <p>161:2 Compression keywords, do you?</p> <p>Bechtel, Benjamin 01-10-2020 (00:00:47)</p> <p>161:4 THE WITNESS: No, I do not.</p> <p>161:5 Q. (BY MS. DURHAM) Who picked the</p> <p>161:6 keywords that you're discussing here?</p> <p>161:7 A. The ones in the e-mail?</p> <p>161:8 Q. Yes.</p>	<p>clear</p> <p>Bechtel.64</p> <p>DX42.1</p> <p>DX42.3</p> <p>DX42.1.1</p> <p>DX42.1.2</p> <p>DX42.1.3</p> <p>DX42.1.4</p> <p>DX42.1.5</p> <p>DX42.1.6</p> <p>Bechtel.65</p>

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	161:9 A. I was highlighting them from	
	161:10 the full list of keywords.	
	161:11 Q. And is the full list of	DX42.3
	161:12 keywords here at the exhibit that we see at	
	161:13 34554?	
	161:14 A. No, it is not.	
	161:15 Q. Well, it says page 1 of 1.	DX42.3.1
	161:16 What would you assume is missing?	
	161:17 A. This report is specifically the	
	161:18 top 20 keywords.	
	161:19 Q. Oh, I see. Okay.	
	161:20 So nowhere in the top 20	DX42.3.2
	161:21 keywords is there any reference to Cool	
	161:22 Compression in November of 2012; correct?	
161:24 - 162:6	Bechtel, Benjamin 01-10-2020 (00:00:16)	Bechtel.66
	161:24 THE WITNESS: None that were	
	161:25 ranking, no. Or ranking in the top	
	162:1 20.	
	162:2 Q. (BY MS. DURHAM) Well, in fact	
	162:3 when we looked at Exhibit 270, we saw that	DX43.1.1
	162:4 there were -- there was no Cool Compression	
	162:5 for all keywords; correct?	
	162:6 A. Correct.	
163:12 - 163:24	Bechtel, Benjamin 01-10-2020 (00:00:37)	Bechtel.67
	163:12 Q. (BY MS. DURHAM) Showing you	
	163:13 what's been marked Exhibit 272, Mr. Bechtel,	DX51.1
	163:14 what is this document?	
	163:15 A. This looks like targeted	
	163:16 keywords.	
	163:17 Q. What does that mean?	
	163:18 A. It looks like the same list	
	163:19 from the last keyword report.	
	163:20 Q. But this time it's for	
	163:21 February 9th, 2013; isn't that correct?	DX51.1.2
	163:22 A. Yes.	
	163:23 Q. And is Cool Compression a	DX51.1.1
	163:24 targeted keyword for 2013 in this report?	
164:1 - 164:7	Bechtel, Benjamin 01-10-2020 (00:00:09)	Bechtel.68
	164:1 THE WITNESS: I do not see it.	
	164:2 Q. (BY MS. DURHAM) Okay. Why is	

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	164:3 that?	
	164:4 A. Same reason it wasn't on the	
	164:5 previous one.	
	164:6 Q. And that is?	
	164:7 A. We did not select it.	clear
166:3 - 166:12	Bechtel, Benjamin 01-10-2020 (00:00:22)	Bechtel.69
	166:3 Q. (BY MS. DURHAM) Showing you	
	166:4 what's been marked Exhibit 274, what is this,	DX47.1
	166:5 Mr. Bechtel?	
	166:6 A. This looks like another keyword	
	166:7 report.	
	166:8 Q. This is a keyword ranking	DX47.2
	166:9 report for sweatitout.com for April of 2013?	DX47.2.1
	166:10 A. Yes.	
	166:11 Q. And is Cool Compression	
	166:12 anywhere in the keywords here?	
166:14 - 166:17	Bechtel, Benjamin 01-10-2020 (00:00:07)	Bechtel.70
	166:14 THE WITNESS: No, it is not.	
	166:15 Q. (BY MS. DURHAM) Why is that?	
	166:16 A. Because it was not selected at	
	166:17 the beginning of the process.	
168:24 - 169:10	Bechtel, Benjamin 01-10-2020 (00:00:21)	Bechtel.71
	168:24 Q. (BY MS. DURHAM) Showing you	DX45.1
	168:25 what's been marked Exhibit 277, what is this,	
	169:1 Mr. Bechtel?	
	169:2 A. This is another keyword ranking	
	169:3 report.	
	169:4 Q. Is this again for	DX45.1.1
	169:5 sweatitout.com but here at August 4th of	
	169:6 2013?	
	169:7 A. Yes, it is.	
	169:8 Q. And is Cool Compression used	
	169:9 anywhere here in the keywords for	
	169:10 sweatitout.com?	
169:12 - 169:13	Bechtel, Benjamin 01-10-2020 (00:00:01)	Bechtel.72
	169:12 THE WITNESS: No, I do not see	
	169:13 it.	
171:17 - 172:18	Bechtel, Benjamin 01-10-2020 (00:00:59)	Bechtel.73
	171:17 Q. (BY MS. DURHAM) Showing you	DX49.1
	171:18 what's been marked Exhibit 280, what is this,	

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Page/Line	Source	ID
	171:19 sir?	
	171:20 A. This is another report from	DX49.1.1
	171:21 Google Analytics.	
	171:22 Q. What does it show here?	
	171:23 I see some social networks	DX49.1.4
	171:24 referenced.	
	171:25 A. This looks like it's showing	
	172:1 the visits from the specific social networks.	
	172:2 Q. So visits to sweatitout.com	
	172:3 from the social networks listed here in	
	172:4 numbers 1 through 5?	
	172:5 A. Correct.	
	172:6 Q. So am I reading this correctly	
	172:7 if I conclude that there are only 14 visits	DX49.1.5
	172:8 to sweatitout.com from Twitter in this time	
	172:9 period?	
	172:10 A. Yes.	
	172:11 Q. Only five from Facebook?	DX49.1.6
	172:12 A. Yes.	
	172:13 Q. And only one from the others?	DX49.1.7
	172:14 A. Yes.	
	172:15 Q. And the average visit duration	DX49.1.8
	172:16 for Twitter was just around a minute; is that	
	172:17 correct?	
	172:18 A. Yes.	
172:21 - 173:7	Bechtel, Benjamin 01-10-2020 (00:00:30)	Bechtel.74
	172:21 Q. (BY MS. DURHAM) Showing you	
	172:22 what's been marked Exhibit 289, what is this	DX50.1
	172:23 document -- Exhibit 281, what are we looking	
	172:24 at here, Mr. Bechtel?	
	172:25 A. This looks like a keyword	
	173:1 ranking report.	
	173:2 Q. A keyword ranking report for	DX50.1.1
	173:3 sweatitout.com for September of 2013; is that	
	173:4 correct?	
	173:5 A. That looks correct.	
	173:6 Q. And is Cool Compression in here	DX50.1.2
	173:7 as a keyword?	
173:9 - 173:9	Bechtel, Benjamin 01-10-2020 (00:00:01)	Bechtel.75
	173:9 THE WITNESS: I do not see it.	

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182:20 - 183:2	Bechtel, Benjamin 01-10-2020 (00:00:37)	Bechtel.76
	182:20 Q. (BY MS. DURHAM) I'm showing	DX53.1
	182:21 you an e-mail string that's been marked	
	182:22 Exhibit 284, and it appears to be a string	
	182:23 between you and Lontex that dates over	
	182:24 several years. So if I go to the very bottom	
	182:25 of the string, it looks like it starts off	DX53.1.1
	183:1 with an e-mail from U.S. Trademark Exchange	
	183:2 to sales@sweatitout.com on December 17, 2014.	
183:12 - 184:7	Bechtel, Benjamin 01-10-2020 (00:00:58)	Bechtel.77
	183:12 Q. And the subject is Hard Copy	
	183:13 Cool Compression Video; is that correct?	
	183:14 A. Yes.	
	183:15 Q. And there's some reference to	DX53.2.1
	183:16 uploading a video to media -- to our	
	183:17 mediafire account, et cetera, in that e-mail	
	183:18 string?	
	183:19 A. Yes.	
	183:20 Q. But then it looks like, in a	DX53.1.2
	183:21 couple months later, on February 9th, 2015,	DX53.1.3
	183:22 Mr. Nathan writes to you and says: Ben:	
	183:23 Please place this video on our sweatitout	DX53.1.4
	183:24 YouTube channel.	
	183:25 Do you see that there?	
	184:1 A. Yes.	
	184:2 Q. Okay. Do you recall placing	
	184:3 that video on the sweatitout YouTube channel	
	184:4 for Lontex?	
	184:5 A. I don't recall, but I'm going	
	184:6 to say it was done based off of the request	
	184:7 and our process.	
185:13 - 185:17	Bechtel, Benjamin 01-10-2020 (00:00:19)	Bechtel.78
	185:13 Q. do you believe that that	
	185:14 video was up from February -- or around	
	185:15 February 2015 through the time that	
	185:16 Mr. Nathan asked you to take it down ASAP in	
	185:17 January of 2016?	
185:19 - 185:20	Bechtel, Benjamin 01-10-2020 (00:00:03)	Bechtel.79
	185:19 THE WITNESS: It appears to	
	185:20 have been have, yes.	

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186:2 - 187:25	Bechtel, Benjamin 01-10-2020 (00:02:23)	Bechtel.80
186:2	Q. (BY MS. DURHAM) Showing you	DX52.1
186:3	what's been marked Exhibit 285, it's an	
186:4	e-mail chain again. Let's start with what I	
186:5	believe is the first in the string on	DX52.3.1
186:6	page 6587. It's an e-mail from you on	
186:7	January 29th, 2016 to Lontex.	DX52.3.2
186:8	Do you see that one there?	
186:9	A. Yes.	
186:10	Q. The subject is Sweat It Out	DX52.3.3
186:11	Content For Review.	
186:12	And you say: Hello Efraim,	DX52.3.4
186:13	Please see the most recent blogs and press	DX52.3.5
186:14	releases attached for your review and	
186:15	approval.	
186:16	Was it consistent with your	
186:17	business relationship with Lontex to provide	
186:18	the blog content and press release content	
186:19	for Lontex's review?	
186:20	A. Yes. Any posting would	
186:21	typically go through for final approval	
186:22	before we did.	
186:23	Q. I believe you've already talked	
186:24	about what the goal was with the press	
186:25	releases that 1SEO was creating, but what was	
187:1	the goal with the blog content?	
187:2	A. Blog content on a website has a	
187:3	couple of different functions. One of the	
187:4	primary ones is that it consistently places	
187:5	fresh content on a website.	
187:6	So Google obviously has	
187:7	millions and millions of websites to crawl,	
187:8	so by kind of sending them it's message of	
187:9	hey, we have new content on our site, it kind	
187:10	of entices them, hey, make sure you're paying	
187:11	attention to us, kind of thing.	
187:12	It can also have the off	
187:13	opportunity of going viral, so to speak.	
187:14	Sometimes blogs can catch on, depending on	
187:15	the nature of their -- the subject or the	

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187:16 nature. For example, we had a tailor who
 187:17 wrote a blog on how to tie a bow tie, and it
 187:18 had thousands and thousands and thousands of
 187:19 views every month.
 187:20 So that is another function of
 187:21 it, as well as just getting additional
 187:22 information on your website.
 187:23 Q. So would it have been important
 187:24 to include Cool Compression in blog content
 187:25 if that was a brand of Lontex?

188:2 - 189:6

Bechtel, Benjamin 01-10-2020 (00:01:37)**Bechtel.81**

188:2 THE WITNESS: If they wanted
 188:3 to, and if it was relative to the
 188:4 nature of the specific piece.
 188:5 Q. (BY MS. DURHAM) So it looks
 188:6 like here on February 1st of 2016, Lontex
 188:7 wrote back to you and said: I read the PR and
 188:8 the blog for December 2015/January 2016 and
 188:9 I liked the content very much. One thing
 188:10 PLEASE: Our trademark is SWEAT IT OUT is our
 188:11 asset and must appear with the Registered
 188:12 symbol, and everywhere it is shown, it should
 188:13 be the phrase in capitals and the registered
 188:14 mark.
 188:15 What is your understanding of
 188:16 what Mr. Nathan is telling you there?
 188:17 A. My understanding is to make
 188:18 sure that registered symbol is listed every
 188:19 time when Sweat It Out is stated in the
 188:20 pieces of content.
 188:21 Q. And I see here you wrote back
 188:22 on February 1st, 2016, and you wrote: Thank
 188:23 you Efraim. Please see the attached press
 188:24 releases and blogs for your final approval.
 188:25 Also, the updates to the website for COOL
 189:1 COMPRESSION have been added.
 189:2 What does that mean?
 189:3 A. I don't know exactly without
 189:4 seeing more information, but it sounds like
 189:5 there were changes to the website made

DX52.2.1

DX52.2.2

DX52.2.3

DX52.1.1

DX52.2.5

DX52.2.6

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189:12 - 189:16	189:6 regarding Cool Compression. Bechtel, Benjamin 01-10-2020 (00:00:12)	Bechtel.82
	189:12 Q. And then you say here on	DX52.1.3
	189:13 February 2nd, 2016: Everything should be	DX52.1.4
	189:14 completed for the COOL COMPRESSION updates	
	189:15 for you as well; correct?	
	189:16 A. Correct.	
194:22 - 196:14	Bechtel, Benjamin 01-10-2020 (00:02:10)	Bechtel.83
	194:22 Q. (BY MS. DURHAM) Showing you an	
	194:23 e-mail string again marked as 286. This one	DX39.1
	194:24 is 32443 through 32448. Let's just start	
	194:25 with the e-mail string that -- or the actual	DX39.2.1
	195:1 e-mail that Lontex sent to you on	
	195:2 January 31st, 2016.	DX39.2.2
	195:3 Do you see that? He sent it to	
	195:4 you, and he copied Megan -- is it dite-er or	DX39.2.3
	195:5 A. Dik-ter	
	195:6 Q. Dik-ter? Okay.	
	195:7 The subject is COOL	DX39.2.4
	195:8 COMPRESSION-Urgent Addition to our website	
	195:9 sweatitout.com 6 places:	
	195:10 Hey Ben: URGENT, MUST BE	DX39.2.5
	195:11 COMPLETED BY 5PM Monday February 1/16.	
	195:12 What is Mr. Nathan asking of	
	195:13 you there, sir?	
	195:14 A. It looks like he's asking for	
	195:15 Cool Compression to be added to the	DX39.3.1
	195:16 sweatitout.com website. Please use it	
	195:17 exactly as it appears above with the	
	195:18 registered symbol following the phrase in	
	195:19 capitals.	
	195:20 Please add to the following	
	195:21 places: On -- in the heading between the	
	195:22 flag and "The Compression Experts!"	
	195:23 In the footer, between "in" and	DX39.3.2
	195:24 "testimonials."	
	195:25 The footer again, adding the	
	196:1 copyright line beneath the copyright for	
	196:2 Sweat It Out.	
	196:3 It looks like also on e-mail	DX39.4.1

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198:19 without other information. This is one 198:20 e-mail and a link. I couldn't give you an 198:21 honest answer.		
199:22 - 200:9	Bechtel, Benjamin 01-10-2020 (00:00:33)	Bechtel.86
199:22 Q. And I just want to go back to 199:23 something you said. What did you mean when 199:24 you said you talked to Lontex about 199:25 e-commerce and how Nike displays their 200:1 products online and in online stores? 200:2 A. In reference to the e-mail that 200:3 we went over a while ago, we used that in 200:4 reference to how they display products online 200:5 and in reference to a possible way of 200:6 designing his new site. 200:7 Q. So, in other words, you were 200:8 holding up Nike's website as an example as to 200:9 how you might redesign Lontex's website?		
200:11 - 200:17	Bechtel, Benjamin 01-10-2020 (00:00:12)	Bechtel.87
200:11 THE WITNESS: No. It was 200:12 actually in the opposite fashion, 200:13 because he's a different -- somewhat 200:14 of a different audience. 200:15 Q. (BY MS. DURHAM) So you wanted 200:16 to differentiate yourself, because he has a 200:17 different audience?		
200:19 - 200:20	Bechtel, Benjamin 01-10-2020 (00:00:03)	Bechtel.88
200:19 THE WITNESS: From an overall 200:20 perspective, yes.		
205:1 - 205:24	Bechtel, Benjamin 01-10-2020 (00:01:11)	Bechtel.89
205:1 Q. (BY MS. DURHAM) Showing you 205:2 what's been marked Exhibit 289, this is an 205:3 e-mail string that involves you, Rebecca 205:4 Young, and Lontex on December 15th, 2016. 205:5 Who is Rebecca Young?		DX30.1 DX30.1.1
205:6 A. She was a website developer at 205:7 1SEO.		DX30.1.2
205:8 Q. Okay. And it looks like she 205:9 wrote to Lontex on December 15, 2016 and 205:10 said: I hope you are doing well-sorry we will 205:11 not be seeing you at the party tomorrow. I		DX30.1.3 DX30.1.4

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	205:12 wanted to let you know I made the call to --	
	205:13 I made the "Call to Make Payment" message on	
	205:14 the checkout page larger and bolder for you.	
	205:15 Please see screenshot below and let me know	
	205:16 if it all looks good, thanks!	
	205:17 Do you see that screen shot	DX30.2.1
	205:18 there?	
	205:19 A. Yes, I do.	
	205:20 Q. Does that mean you had to call	
	205:21 in to make a payment at that point, and you	
	205:22 couldn't enter a credit card either directly	
	205:23 or through PayPal on the website?	
	205:24 A. Yes.	
206:2 - 206:24	Bechtel, Benjamin 01-10-2020 (00:01:10)	Bechtel.90
	206:2 Q. (BY MS. DURHAM) Showing you	
	206:3 what's been marked Exhibit 290, is this a	DX11.1
	206:4 communication from SEO's Base Camp?	
	206:5 A. I'm sorry?	
	206:6 Q. Is this a communication --	
	206:7 A. Yes.	
	206:8 Q. -- from your Base Camp?	DX11.1.1
	206:9 Okay. What is going on here?	
	206:10 It says checkmark, put together some posts	DX11.1.2
	206:11 around "COOL Compression" for Efraim to	
	206:12 review, on November 17th, 2016.	
	206:13 A. So that looks like a task	
	206:14 assigned to Michael, to create social media	DX11.1.3
	206:15 posts. It doesn't say what platform, I don't	
	206:16 think, but it looks possibly like just	
	206:17 Twitter. Could be Facebook as well. For our	
	206:18 social media representative Michael to put	
	206:19 together for review.	
	206:20 Q. Why was Michael putting	
	206:21 together all of the social media posts that	
	206:22 reference Cool Compression in the end of	
	206:23 2016?	
	206:24 A. To promote the product.	
215:19 - 216:15	Bechtel, Benjamin 01-10-2020 (00:00:54)	Bechtel.91
	215:19 Q. (BY MS. DURHAM) I'm showing	
	215:20 you what's been marked Exhibit 291. There's	DX38.1

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Page/Line	Source	ID
215:21	an e-mail that Mr. Nathan sent to you on	DX38.1.2
215:22	May 13th, 2016, subject line	
215:23	cool-compression.com-Urgently need to point	
215:24	to our website sweatitout.com.	
215:25	Do you see that e-mail?	
216:1	A. Yes.	
216:2	Q. He says: Hi Ben: This is a	DX38.1.3
216:3	legal matter: we need our url that currently	
216:4	doesn't point anywhere: cool-compression.com	
216:5	to be pointed to our Sweat It Out dot -- our	
216:6	sweatitout.com website. Please let me know	
216:7	when this work is finished.	
216:8	Did he elaborate on what the	
216:9	legal matter was that he was referring to	
216:10	here?	
216:11	A. Not in this e-mail, no.	
216:12	Q. Well, do you know what it was	
216:13	referring to?	
216:14	A. I'm going to connect and say it	
216:15	was in regards to this.	
219:15 - 220:11	Bechtel, Benjamin 01-10-2020 (00:01:01)	Bechtel.92
219:15	Q. (BY MS. DURHAM) Showing you	
219:16	what's been marked Exhibit 293, what is this?	DX37.1
219:17	A. This looks like a report from	
219:18	2016.	
219:19	Q. Is this a report for	DX37.3
219:20	sweatitout.com in November of 2016?	
219:21	A. Yes.	
219:22	Q. And what am I looking at here	
219:23	in -- on the page that is 3 of 16, where it	
219:24	says Rankings?	DX37.3.1
219:25	A. These are some of the terms and	
220:1	where they're ranking organically.	
220:2	Q. So are these the keywords for	
220:3	the sweatitout.com website?	
220:4	A. On these three pages, yes.	
220:5	Q. So the keywords for the	
220:6	sweatitout.com website in November 2016 can	
220:7	be viewed at pages 3, 4, and 5 of this	DX37.4
220:8	report?	DX37.5

Bechtel-Nike Initials + Lontex Counters

Page/Line	Source	ID
	220:9 A. Yes.	
	220:10 Q. And nowhere in here is there	DX37.3.1
	220:11 Cool Compression; is that correct?	
220:13 - 220:17	Bechtel, Benjamin 01-10-2020 (00:00:07)	Bechtel.93
	220:13 THE WITNESS: I do not see it	
	220:14 in there.	
	220:15 Q. (BY MS. DURHAM) Why is that?	
	220:16 A. Because it was not added to the	
	220:17 list at that time.	
220:18 - 220:21	Bechtel, Benjamin 01-10-2020 (00:00:09)	Bechtel.94
	220:18 Q. So is it fair to say, then,	
	220:19 that the sweatitout.com website as of	
	220:20 November 2016 was not keyword optimized for	
	220:21 Cool Compression?	
220:23 - 220:24	Bechtel, Benjamin 01-10-2020 (00:00:02)	Bechtel.95
	220:23 THE WITNESS: It does not look	
	220:24 like it.	clear
221:6 - 221:18	Bechtel, Benjamin 01-10-2020 (00:00:31)	Bechtel.96
	221:6 Q. (BY MS. DURHAM) What are we	
	221:7 looking at here in Exhibit 294?	DX36.1
	221:8 A. This looks like the December	
	221:9 report on the next month of 2016.	
	221:10 Q. Again, for sweatitout.com?	
	221:11 A. Yes.	
	221:12 Q. And does Cool Compression	DX36.3
	221:13 appear anywhere in the keywords for the	
	221:14 sweatitout.com website in December 2016?	
	221:15 A. It does not look like it.	
	221:16 Q. So in this, is it fair to say	
	221:17 that the website was not optimized for Cool	
	221:18 Compression in December of 2016?	
221:20 - 221:21	Bechtel, Benjamin 01-10-2020 (00:00:02)	Bechtel.97
	221:20 THE WITNESS: Not in this	
	221:21 report.	
222:3 - 222:5	Bechtel, Benjamin 01-10-2020 (00:00:08)	Bechtel.98
	222:3 Q. (BY MS. DURHAM) Showing you	
	222:4 what's been marked Exhibit 295, what is	
	222:5 Exhibit 295, sir?	
222:6 - 222:11	Bechtel, Benjamin 01-10-2020 (00:00:18)	Bechtel.99
	222:6 A. This looks like a keyword	

Bechtel-Nike Initials + Lontex Counters

Page/Line	Source	ID
	222:7 ranking report from January 2017.	
	222:8 Q. For Sweat It Out?	
	222:9 A. Yes.	
	222:10 Q. Okay. And for January 2017, is	DX35.3
	222:11 Cool Compression anywhere in the keywords?	
222:13 - 222:18	Bechtel, Benjamin 01-10-2020 (00:00:09)	Bechtel.100
	222:13 THE WITNESS: It does not look	
	222:14 like it.	
	222:15 Q. (BY MS. DURHAM) So is it fair	
	222:16 to say that in January of 2017, the	
	222:17 sweatitout.com website was not optimized for	
	222:18 Cool Compression?	
222:20 - 222:21	Bechtel, Benjamin 01-10-2020 (00:00:01)	Bechtel.101
	222:20 THE WITNESS: Not in this	
	222:21 report.	clear
237:20 - 237:22	Bechtel, Benjamin 01-10-2020 (00:00:07)	Bechtel.102
	237:20 Q. So is it fair to say, then,	
	237:21 that the sweatitout.com website was not being	
	237:22 optimized for Cool Compression in 2015?	
237:24 - 238:9	Bechtel, Benjamin 01-10-2020 (00:00:26)	Bechtel.103
	237:24 THE WITNESS: Yes.	clear
	237:25 Q. (BY MS. DURHAM) So you've	
	238:1 worked closely with Mr. Nathan for at least	
	238:2 eight years now; right?	
	238:3 A. Yes.	
	238:4 Q. Has he ever told you at any	
	238:5 point that he thought that Nike did anything	
	238:6 that impacted the traffic to his	
	238:7 sweatitout.com website?	
	238:8 A. That specifically, no, I don't	
	238:9 recall anything like that.	
244:17 - 245:25	Bechtel, Benjamin 01-10-2020 (00:01:39)	Bechtel.104
	244:17 Q. And in -- or your e-mail to	
	244:18 Britt on June 24, 2019, you mentioned that	
	244:19 the target audience for Lontex is a little	
	244:20 different than Under Armor or Nike. Can you	
	244:21 elaborate a little bit as to why you made	
	244:22 that statement?	
	244:23 A. I made that statement because	
	244:24 the audience and target audience for Sweat It	

Page/Line

Source

ID

244:25 Out is more medical-based. And what I mean
 245:1 by that is it's targeted towards -- towards
 245:2 athletes, people who are athletic and run
 245:3 marathons, play tennis, those type of
 245:4 activities, for prevention and recovery of
 245:5 injuries. And that's -- it's a very
 245:6 functional product, and that's its pretty
 245:7 much sole purpose.
 245:8 What I referred to in that
 245:9 statement is Under Armor and Nike, from an
 245:10 apparel standpoint, have a wide array of
 245:11 products, from shoes to regular shorts and
 245:12 clothing to compression gear.
 245:13 So when you're talking about
 245:14 audience, I look at Under Armor and Nike as
 245:15 more of a fashion type of thing, and that
 245:16 people wear their clothes and other athletic
 245:17 apparel, including compression gear, to just
 245:18 normal every-day activities, whereas Sweat It
 245:19 Out's products are geared towards, you know,
 245:20 those weakened athletes or professional
 245:21 athletes or athletic trainers or people who
 245:22 are doing rehab specifically because of the
 245:23 functionality of the product. So when I look
 245:24 at the audience, that's how I differentiate
 245:25 between the two.

Nike Initial Designations = 01:07:05

Lontex Counters = 00:00:38

Total Time = 01:07:43

Documents Shown


DX11
 DX13
 DX14
 DX17
 DX19
 DX20
 DX22

Bechtel-Nike Initials + Lontex Counters

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DX806		
DX9		

Case Clips Detailed Report

10290_Lontex v Nike

 **CUNNINGHAM, SEAN - VOL 1 - 8/25/2021 1 Clips (Running 00:42:11.417)**

 **CUNNINGHAM DIRECT (Running 00:42:11.417)**

1. Page 04:15 to 20:24 (Running 00:19:23.500)

15 Counsel, please identify yourselves and
16 state who your represent.
17 MR. WAGNER: This is Ben Wagner with
18 Troutman Pepper representing Lontex Corporation.
19 MR. HYNES: Michael Hynes from DLA Piper
20 for Nike, with me is my colleague, Marc Miller.
21 VIDEOGRAPHER: Okay. The court reporter
22 today is Paige Kelleher and she may now swear or
23 affirm the deponent.
24 COURT REPORTER: Okay. Sir, can you raise
25 your right hand for me, please.
01 THE WITNESS: (Complies.)
02 COURT REPORTER: Do you solemnly swear the
03 testimony you're about to give is the truth, the
04 whole truth, and nothing but the truth?
05 THE WITNESS: Yes.
06 DIRECT EXAMINATION
07 MR. WAGNER:
08 Q. Please state your name for the
09 record.
10 A. Sean Cunningham.

Total Number of Clips:1

Total Number of Segments:9

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11 Q. And you understand that the testimony

12 you are giving in trial deposition today is the

13 same as if you were sitting on the stand in front

14 of a judge and jury, correct?

15 A. Yes, I do.

16 Q. And your testimony is to be your full

17 and complete and accurate testimony?

18 A. Yes.

19 Q. What is your profession,

20 Mr. Cunningham?

21 A. I am an athletic trainer.

22 Q. And how long have you been in that

23 profession?

24 A. I have been an athletic trainer for

25 roughly 34 years now.

01 Q. Did you go to college?

02 A. I went to school -- undergraduate

03 work at Canisius College in Buffalo New York where

04 I got a degree -- BS degree in sports medicine.

05 And then I went to -- got a post-graduate master's

06 degree in exercise science from Florida Atlantic

07 University in 1994, I think is when I graduated.

08 Q. And who did you work for out of

09 college?

10 A. I worked for the Montreal Expos for

11 about 15 years right out of school from 1987 to

Total Number of Clips:1

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12 2001. At which point in time I moved on to the

13 Miami Marlins and worked for the Florida Marlins

14 which became the Miami Marlins from 2002 until

15 April 2016.

16 Q. And for the Expos what was your

17 title?

18 A. I was -- I had several titles while I

19 was with the Expos. I was the minor league trainer

20 for -- from probably about 1987 to 1992. I moved

21 up to be director and coordinator of rehab from '92

22 to '96. I moved up to the major league club in '97

23 as a strength coach and third head athletic

24 trainer. I was up in Montreal from 1987 to 2001 in

25 that capacity. And then I became the head athletic

01 trainer for the Florida/Miami Marlins in 2002 and

02 did that for a little over 14 years.

03 Q. Do you hold any position for the

04 Marlins other than head athletic trainer?

05 A. No -- No, I did not.

06 Q. And what was the role of the head

07 athletic trainer for the Marlins?

08 A. We -- you know, the head athletic

09 trainer serves a lot of purposes or has -- has a

10 lot of roles. We -- you know, obviously we're

11 dealing with the athletes. You know, I was

12 overseeing the medical department, working liaison

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13 with the doctors in the front office. I oversee

14 all the care -- care -- any of the medical care

15 with any of the athletes, which involved injury

16 assessment; injury evaluation; injury prevention;

17 injury rehabilitation following the injury. I had

18 to do a budget. I had budgets, so it was equipment

19 purchasing. And then facility -- I also oversaw

20 the facility construction both at Roger Dean

21 Stadium and Jupiter, our spring training facility,

22 and then also our new -- our new complex down in --

23 down in Miami, Marlins Park, in 2012.

24 Q. You said a new complex, did the

25 Marlins move to a new complex?

01 A. Yeah. The Marlins were -- we shared

02 a complex with the Dolphins when I first started

03 working with them in 2002. And we shared that

04 complex for roughly 10 years. And then we had a

05 new complex built in 2012 further down in the city

06 of Miami on the old Orange Bowl site; so right down

07 in Miami.

08 Q. And as a head athletic trainer did

09 your involvement with the athletes go beyond

10 helping them after an injury?

11 A. Yeah. Like I said, you know, from an

12 athletic injury standpoint, you know, we dealt with

13 injury prevention. We dealt with the diagnosis.

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14 We dealt with rehabilitation of injuries and -- you

15 know, a lot of what we did was proactive from a

16 prevention standpoint, as well as what we had to do

17 post-injury.

18 Q. While you were a head athletic

19 trainer for the Marlins were you a member of any

20 organizations as a part of that?

21 A. Yes. I was a member of several

22 organizations. I was a member of the NATA which is

23 the National Athletic Trainers Association, the

24 accrediting body for athletic trainers. So I went

25 through and took a test and become certified and

01 became a certified athletic trainer; that also

02 involved maintaining continuing education to

03 maintain that membership.

04 I was a member of the NSCA which is the

05 National Strength & Conditioning Association. I

06 earned a CSCS or a certified strength and

07 conditioning -- conditioning specialist

08 certification, as well, and maintained that through

09 continuing education and continue to hold both of

10 those certifications.

11 And then I was a member of PBATS which is

12 the Professional Baseball Athletic Trainers

13 Society. And my role in that organization has kind

14 of shifted through the years. I was initially a

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15 minor league member followed by an active major
16 league member. And now I continue to be an alumni
17 member since I stepped down in 2016.

18 Q. Were you a member of PBATS for the
19 entirety of your time with the Marlins?

20 A. Yes, I was. And the -- and the
21 entirety of my time with the Expos. So I have been
22 a member of PBATS in some capacity for the full
23 30 -- 30 -- 30 years that I was in professional
24 baseball; and then four years since then, as well.

25 Q. So are there qualifications that a
01 athletic trainer has to meet in order to be a
02 member of PBATS?

03 A. A lot of it -- it's more of a -- from
04 the standpoint when you say qualifications --
05 qualifications are you have to be a member in
06 standing. You have to be -- have the -- you have
07 to have a role in professional baseball as an
08 athletic trainer in some capacity. And again,
09 there's -- there are several bodies to that.
10 There's a minor league body to it. There's a major
11 league component and then there's an alumni
12 component.

13 Q. So what's the purpose of the PBATS
14 organization?

15 A. It's an opportunity for the -- for

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16 the industry -- you know, for us -- for us as
17 athletic trainers to get together, you know, within
18 the industry to talk about ongoing -- it could be
19 ongoing concerns within the industry, medical
20 concerns within the industry. It's a way for us to
21 get together and discuss products and supplies that
22 we own. It's a way for to us get together and to
23 discuss ongoing medical terms. A lot of times we
24 would meet with -- as a member of the PBATS we
25 would meet with the physicians; they had a similar
01 association, and we would do a medical seminar.
02 And a lot of times that would touch on hot topics
03 within the industry.
04 So there were educational components to it
05 as well as, you know -- as well as a social
06 component to it. It's just an opportunity to get
07 together with other peers within the industry and
08 discuss whatever you might want to discuss;
09 professional or even personal for that matter. But
10 it's an opportunity for all of us to get together
11 when we would meet annually at the winter meetings
12 which would typically -- typically happen in early
13 December; first week in December when Major League
14 Baseball would have the winter meetings. And so it
15 could be an opportunity to kind of get together as
16 a group rather than during the season, you know,

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17 you just basically see the person that's across the

18 field from you in three-day increments.

19 Q. And did the winter meetings -- annual

20 winter meetings happen every year during your time

21 with the Marlins?

22 A. As far as I can remember they did,

23 yes.

24 Q. What was the purpose of the annual

25 meetings?

01 A. Again, the purpose of the annual

02 meetings were for us to get -- to get -- to get

03 together as a group and discuss any ongoing

04 business or ongoing topics of discussion, we would

05 do that. But, you know, we would also -- they --

06 we had a format where we would bring vendors in --

07 or vendors -- well, let me rephrase that. Vendors

08 would have an opportunity to come in to speak to

09 the body as a -- as a group.

10 Q. And what was the role of these

11 vendors at the annual meetings?

12 A. It was twofold -- or actually,

13 threefold. A lot of them it was networking for

14 their part. They would have whatever their product

15 might be. They would basically describe their

16 product -- and the format over the years changed a

17 little bit. Initially it was a format where the

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18 individual would stand up in front of the group of
19 roughly 60 to 75 athletic trainers and kind of let
20 them know what the product was -- and introduce
21 themselves, let them know what the product was.
22 And then at that point in time they'd make
23 themselves available after the fact for anyone that
24 might -- anyone whose interest might -- anyone that
25 might have interest in what they were -- what they
01 were there representing.
02 That moved on to a little bit different
03 format where they each had their booths -- each of
04 vendors had their booths and you went around as a
05 team to -- or as a staff to meet with them
06 individually in five -- what would amount to be
07 five or 10-minute increments to do the same thing,
08 discuss -- discuss what new products might be, what
09 they might have or discuss the product
10 specifically, possibly do some ordering right at
11 that point in time, or if not, at least do an
12 exchange of business cards if you hadn't already
13 done that so that you could have a relationship
14 moving forward.
15 Q. When did this transition to booths
16 take place approximately?
17 A. Probably in the neighborhood of 2010
18 to '12. I mean, it was -- it happened -- it was

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19 recent. It was fairly recent. And when I say
20 recent, you know, I kind of attribute everything to
21 knowing that I left there in 2016. I didn't attend
22 any more winter meetings after 2016. And so that's
23 what I equate when I say fairly recent. It was
24 before that. We probably did three of four booth
25 things -- you know, formats.

01 Q. And as a head athletic trainer for
02 the Marlins and a member of the PBATS, were you
03 familiar any products in particular clothing
04 companies?

05 A. Yeah. I mean, there were some
06 clothing companies that presented, but obviously,
07 one of them was SWEAT IT OUT would come and Efraim
08 would do -- and I remember Efraim doing -- Efraim
09 would do a talk, you know, stand up in front of
10 everybody and have his product with him and show us
11 what he considered the unique stretchiness of it,
12 the cool compression characteristics that it had,
13 and kind of stretch the fabric in every way. He
14 would talk about the quality of his -- how he had
15 been in the textile industry for, you know,
16 whatever the years were. It was, you know, 30 or
17 40 years, and how he, you know, made sure -- made
18 sure that everything of quality of his material was
19 second to nobody else's on the market.

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20 Q. So you mentioned the term "cool
21 compression". Does the phrase "cool compression"
22 mean something to you?
23 A. Yeah. Well again, that was just --
24 he gave a very similar speech every year when he
25 was up there. And I mean, for me specifically -- I
01 mean, when I was in Montreal it didn't mean --
02 necessarily mean a lot to me because we were
03 playing indoors and obviously we really wouldn't be
04 exposed to the temperatures.
05 But when I got down to Miami it was
06 something that had a little bit more -- little bit
07 more of a ring to it. But it was something that --
08 I became very -- you know, the cool compression was
09 just that, it was something where they didn't heat.
10 Some of the products that were on the
11 market at the time -- one of the problems that the
12 athletes ran into it that it just got too hot in
13 it -- or it created too hot. And, you know, the
14 compression or the neoprene or the rubber that was
15 being used made it just too hot. And what his
16 product didn't do is -- there weren't complaints
17 from the athletes that it was too hot or it was too
18 constricting.
19 Q. Do you recall when you started
20 hearing the phrase "cool compression"?

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Total Number of Segments:9

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21 A. It was -- you know, I would have to
22 say that it was probably in the neighborhood of
23 the -- you know, the mid to late 2000's. You know,
24 it was something that -- that was when it really
25 struck me. You know, again, I went down to Miami
01 in 2002. We had some -- we had some -- some of the
02 SWEAT IT OUT product that was already in inventory.
03 I was familiar with the SWEAT IT OUT products from
04 when we were -- when we were in Montreal. It was
05 in our inventory in Montreal, as well. But, you
06 know, when I got -- you know, when I got down to
07 Miami where I was outdoors in the heat that was
08 when it really struck me.
09 Q. Do you recall any of the players when
10 you first began using SWEAT IT OUT products for --
11 or -- strike that. Do you recall any of the first
12 players that began using SWEAT IT OUT garments when
13 you were at the Florida Marlins?
14 A. Yes. And, you know, one of the big
15 ones was Mike or Giancarlo Stanton. He went by
16 Mike Stanton at the time, but he had a chronic
17 hamstring injury. And SWEAT IT OUT products were
18 products that had, you know -- you know, they
19 profess the cool compression. It was -- they had
20 lower body products and upper body products. And I
21 really didn't have a lot of use for the upper body

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22 products, but I found it to be very useful for

23 lower body with people that were looking for a

24 little extra support.

25 Giancarlo Stanton was one of our outfielders

01 and he was, you know -- you know, he's every bit of

02 6'7, 260 pounds. He's a big guy. And it was

03 something that he liked. He put it on and he liked

04 it. He wasn't complaining about the heat, the

05 neoprene. He liked the compression. It was giving

06 us the support we were looking for. And one of the

07 things his -- his products offered to us was it

08 provided this multidirectional support and wasn't

09 just strictly constricting, but it had a little bit

10 of give for the guys that were rotating. And

11 Giancarlo Stanton loved it. We had

12 Logan Morrison, who was one of our outfielders, he

13 was another big guy. And so often the problem that

14 we had with products that we were bringing in is

15 was that they were to -- they were too restrictive

16 and they were too hot. And, you know, both of

17 those guys really raved about it providing the

18 support we were looking for to provide and

19 providing the cool compression or not getting too

20 hot.

21 Q. And you said that the stadium moved

22 out in 2012. Do you recall if you began hearing

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23 the phrase "cool compression" before or after that

24 stadium --

25 A. Oh, no, there -- there was no

01 question it was before that. Again, you know,

02 Giancarlo Stanton played with us -- you know, he

03 came up and I'd have to look, 2008 or 2009, he

04 might have been in spring training -- not might

05 have been, he was in spring training before us.

06 How much I would have known -- I mean, I certainly

07 would have known about him but I wouldn't say

08 that -- but this was something that we started --

09 there's absolutely no doubt in my mind we started

10 using this product -- we were outdoors, so it was

11 the old stadium. And again, you equate the old

12 stadium to the years 2002 to 2012. But it wasn't

13 until really that crew came through that all off a

14 sudden, you know, the word was out and we were

15 using a product. It was a product that the players

16 liked. They were talking about it amongst

17 themselves within the clubhouse. And -- and so I

18 would probably say in the neighborhood of 2007/2008

19 just based on the players that were using it.

20 Q. Now, did you perceive any benefits to

21 the SWEAT IT OUT garments that were unique to

22 SWEAT IT OUT garments?

23 A. Say that again. I'm sorry, Ben.

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24 Q. Did you -- let me strike that. What
25 benefits, if any, did you view the SWEAT IT OUT
01 products as having for the players?
02 A. Oh, I think I alluded to it a little
03 bit earlier. There were two very clear benefits
04 that we had. You know, we -- we were -- we were
05 using it kind of a preventative -- initially as a
06 preventive for people that had chronic-type
07 hamstring and lower body-type injuries, core
08 sports' hernias were real common.
09 We had another player by the name of
10 Chris Coghlan who had had a sports' hernia and, you
11 know, we put him in this and it was something that
12 provided the support that I needed as an athletic
13 trainer. I didn't just want to put a wrap on
14 somebody or put something on it that didn't provide
15 the support. And most importantly it was the
16 support that as they went through their running
17 movements and twisting movements that you see in --
18 in all -- all your baseball players, whether it's a
19 pitcher throwing or a hitter hitting, the
20 SWEAT IT OUT products provided that support that I
21 was looking for.
22 And then just as importantly it provided
23 the cool compression from the standpoint of not
24 being too tight, too constrictive, not holding the

Total Number of Clips:1

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25 sweat in the body which a lot of the

01 neoprene-sleeved -- some of the other companies

02 were providing -- it -- it -- it counteracted that

03 or alleviated that concern.

04 Q. So over what period of time while you

05 were at the Marlins were players using

06 SWEAT IT OUT products?

07 A. What -- what I can tell you is based

08 on the players that it was it would have been the

09 last 2000's, mid-2000's. We had a little bit -- I

10 saw -- I saw the product in Montreal. We had the

11 product in Montreal. We didn't use it a lot in

12 Montreal leading up to 2002. As we moved to the

13 new stadium and down in Miami all of a sudden, you

14 know, we had a lot of product that was on hand or

15 already in inventory from the sale, and so we used

16 some of that. But very clearly I know that we were

17 using it and purchasing it regularly with the

18 advent of Hanley Ramirez in 2006/2007;

19 Chris Coghlan; Logan Morrison in like the

20 2008/2009/2010 range.

21 Q. So from the mid to late 2000 when

22 players began using it under your watch, until you

23 left in 2016, what years were players using

24 SWEAT IT OUT garments?

2. Page 21:02 to 27:14 (Running 00:07:33.800)

Total Number of Clips:1

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02 THE WITNESS. We were using -- we were
03 using -- we were using it all the time. We --
04 again, a lot of times from a purchasing --
05 purchasing standpoint if I had a product that I
06 knew a player liked -- any product that I knew the
07 player liked -- we would order it and keep it
08 inventoried. So we were using it that entire time
09 because it was a product that as I mentioned -- you
10 know, serviced our needs both from a comfort
11 standpoint and a functional support standpoint. I
12 can't tell you because I don't have records to the
13 purchasing, but the bottom line is if we had some
14 in stock it was a durable material -- if we had
15 some in stock we didn't necessarily order more of
16 it. If I had the players that were utilizing it --
17 if I had their size in stock I usually didn't --
18 wouldn't order more.

19 Q. So you said players used SWEAT IT OUT
20 products --

21 A. I'm sorry, wouldn't necessarily order
22 more of it.

23 Q. So you said that players would use
24 the SWEAT IT OUT products. What was your role in
25 the players using SWEAT IT OUT products?

01 A. Well, our role was A. -- A.,
02 purchasing or providing it. But they would come to

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03 us with a problem, an injury, and then we would --
04 we would end up -- again, from the standpoint of
05 how we treat our injuries and how we treat the
06 players coming in, if it was something where we
07 thought it could benefit them both from a recovery
08 standpoint and then also an injury prevention
09 standpoint, a support standpoint while they're
10 doing rehab or maybe nursing it back it back to 100
11 percent; we were the ones they hey -- "hey, you
12 know, you might want to try this. We're looking to
13 put a little support and this is -- this is -- you
14 know, this is a product that we use or something
15 that we use and it should help, try it out." And
16 at the end of the day it would be the players would
17 either like it or not like it. And if they liked
18 they would continue to use it. If they didn't like
19 it we had to come up -- or didn't don't what they
20 needed it to do, we would have to come up with some
21 sort of alternative.
22 But a lot of times -- again, what we
23 found -- we would -- we would be the ones
24 suggesting that specific product for the purpose of
25 the -- addressing the injury component to it or the
01 functional component to it.
02 Q. Outside of player injuries did
03 players for the Marlins wear SWEAT IT OUT garments

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04 for non-injury purposes?

05 A. Yes, they would; for comfort
06 purposes. A lot of guys would come in and they
07 could come from -- might come from other
08 organization, they might come from our organization
09 or come up through the minor leagues, but at the
10 end of the day if -- if they had been exposed to
11 the product ahead of time there were people that
12 brought it in. Who they were, I wouldn't
13 necessarily -- couldn't necessarily tell you off of
14 recollection, but they could bring it in with them
15 and use it. And again, this was -- a lot of times
16 this was something we recommended, but sometimes we
17 didn't have to recommend it, the players that were
18 looking for compression may have already found what
19 they were looking for in SWEAT IT OUT product.

20 Q. So while you're at the Marlins did
21 you attend spring training with the team?

22 A. Yes, I did. Again, that was maybe --
23 it was hard -- when you asked earlier what the job
24 of an athletic trainer was it's all encompassing.
25 But that's certainly one of them. You're with the
01 team. You're covering -- you're covering the
02 sports. You're with the team all the time. You're
03 covering the games during the -- during the
04 season. But obviously our spring training facility

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05 in Jupiter, Florida for six weeks, I'm there -- I'm

06 there every day with the team throughout spring

07 training.

08 Q. And did you ever see Efraim Nathan at

09 the spring training events?

10 A. Occasionally we would. Basically I

11 would see Efraim always at the winter meetings;

12 occasionally he would come down to spring training.

13 I wouldn't be able to tell you exactly when. He

14 would let us know -- he might call and let us know

15 he was in town or circulating through. It -- it

16 might have happened a few times -- I know it

17 happened. How many times or what years it

18 happened, I couldn't tell you. I know it happened.

19 A lot of times we would -- he was based out

20 of Philadelphia, and a lot of times we would hit

21 him during the season. You know, being with the

22 Marlins in the National League East we would -- we

23 would go into Philadelphia three times. And of

24 those three times, we would always almost -- three

25 times a season -- we would almost always see him

01 once, sometimes twice. I would say -- I would say

02 we never saw him all three times -- all three trips

03 in. And that might -- and that might have to do

04 with whether or not he saw us in spring training.

05 If he saw us in spring training in March and then

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Total Running Time:00:42:11.417

06 we saw him in April, he wouldn't -- we probably

07 wouldn't, you know, whatever connect I guess for

08 lack of a better word.

09 Q. What was the nature -- what was the

10 nature of the conversations you would have --

11 strike that. Did you have conversations with

12 Mr. Nathan when you would come into town and he

13 would meet with you --

14 A. Yeah.

15 Q. -- or the team?

16 A. Yeah. When we'd come into town, you

17 know, a lot of it was we would -- you know, to some

18 extent we'd bring him into the training room. We'd

19 usually do it at a time when the players weren't

20 around; and the reason being is that we didn't

21 want, you know, players would all come in and say,

22 "Oh, I want two of those, three of those." So a

23 lot of it was -- was inventory control-type thing.

24 And so we would bring him in early and he -- he

25 would kind of go through the same thing. If there

01 were players around, he would go through almost the

02 some type of speech or -- or explanation of his

03 product showing us the stretchiness of it. You

04 know, we again, like to keep him away from players

05 from the standpoint of he would -- might -- might

06 take garments that they were wearing and have

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07 -- them -- have that individual compare the two

08 garments and then he'd talk about the cool

09 compression component. Again, down in Miami that's

10 a -- it was always the selling point of his product

11 because we're dealing with heat all the time.

12 Q. Have you ever heard anyone else other

13 than Mr. Nathan refer to stretch technology of

14 SWEAT IT OUT garments as cool compression?

15 A. Not at that time I hadn't. While I

16 was the -- you know, while I was with the Marlins

17 at no point in time was there ever a -- ever an

18 indication where somebody was else using -- where I

19 thought someone else was using that. You know, he

20 came out with dri-fit terms and things like that.

21 But after -- after I got out I had noticed

22 a -- some signage in a DICK'S Sporting Goods about

23 SWEAT IT -- not about SWEAT IT OUT about the cool

24 compression. And my impression when that happened

25 was that Efraim had been bought out or made some

01 sort of deal with -- with Nike.

02 Q. You said signage, what products was

03 the signage for?

04 A. It was for the stretch products. It

05 was for undergarments; upper body, lower body

06 products.

07 Q. And you said Nike, is that the brand

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08 of the garments that you saw?

09 A. Pardon me?

10 Q. You said Nike in your prior answer,
11 is the Nike garments the brand that you were
12 referring to?

13 A. Yeah. That was the brand I was
14 referring to.

3. Page 28:03 to 38:19 (Running 00:12:29.861)

03 Q. You said that from mid -- sometime in
04 mid to late 2000's is when the Marlins' players
05 began using SWEAT IT OUT garments under your watch,
06 is that correct?

07 A. Correct.

08 Q. From -- and you went to we went
09 training -- sorry, you went to winter meeting for
10 PBATS during that time onward as well, correct?

11 A. Correct.

12 Q. From that time until you retired in
13 2016 from the Marlins, do you recall an annual
14 meeting where the term "cool compression" was not
15 used by Mr. Nathan in his presentation?

16 A. That was a regular -- like I said,
17 that was a regular presentation whether it happened
18 in -- happened in the winter meetings when he was
19 talking in front of everybody; whether it happened
20 in the winter meetings when he was talking in his

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21 booth with the athletic trainers, or when we -- if
22 he came down to spring training, or if we -- or if
23 we meet him in Philadelphia. It would be
24 referred -- you know, he would talk about
25 SWEAT IT OUT. He would talk about the stretchiness
01 of it. He would pull his material in every
02 direction to kind of show the quality of it and
03 then he -- and then he -- and he would refer to it
04 as cool compression without fail every time.
05 And -- and -- and, you know, it was one of
06 those things where at times it would be like well,
07 do we need -- you know, Efraim had reached out to
08 us and wants to meet us in Philadelphia as we're
09 going in. And I would -- usually my assistant
10 athletic trainer would help with -- Mike Kozak was
11 his name, and he would help with purchasing and a
12 lot -- and do a lot of the inventory and the
13 packing. And a lot of times it would be, "Hey do
14 we need -- do we need to go -- do we need to see
15 Efraim? How are we for supplies?" that type of
16 thing.
17 Q. While you were with the Marlins and
18 begun having players use SWEAT IT OUT garments, did
19 you handle the garments yourself?
20 A. Yes. Yes.
21 Q. How frequently?

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22 A. Pardon me?

23 Q. How frequently?

24 A. Well, whatever -- whenever we needed

25 to hand it to the player basically or give it to

01 the player. You know, we would pull it out, it

02 would be in its packaging and we would pull it out

03 and make sure that we had the right size for the

04 individual. We had the individual try it on to

05 make sure that it fit and was providing the support

06 that we were looking for to support.

07 There might be somebody that was in between

08 sizes or didn't like the fit. At the end of the

09 day we needed the player to like the fit because if

10 the player didn't like the fit he wasn't going to

11 wear it. So we would have them try it on at that

12 time and we'd be a part of that process.

13 And then every now and then there might

14 be -- a piece of garment might be left somewhere or

15 thrown in the laundry or thrown in the laundry

16 basket or left somewhere to the point where they

17 wouldn't -- the clubhouse person wouldn't know

18 where -- wouldn't know where -- who it belonged or

19 where it belonged to and then I'd bring it back to

20 us and we might take it to them.

21 Q. And how would you know who to take it

22 to?

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23 A. They had -- there was a little tag on

24 the inside of the garment. And on that tag we

25 would usually write a number -- the player's number

01 on that tag. And so we had to look at the tag to

02 identify -- that was kind of the identifying mark

03 of who it belonged to.

04 Q. Can you remember anything else about

05 what was on that tag?

06 A. Cool compression. SWEAT IT OUT might

07 have been on it. Cool compression was on it, as

08 well. Those two words were typically on it

09 somewhere.

10 Q. And did that presence of cool

11 compression of that tag change over the course of

12 your time with the Marlins?

13 A. No.

14 Q. Did you have opportunity over that

15 entire course to observe on a regular basis the

16 inside tag?

17 A. Yes. Again, any time that we handed

18 it out we were usually the one putting the number

19 on it. Because the one thing we didn't want to do

20 is have it thrown into a laundry up here and then

21 have it not be -- not know where it goes.

22 Q. If cool compression had only

23 appeared -- strike that. How can you be sure that

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24 cool compression was on there the entire time that

25 you saw the garments at the Marlins?

01 A. Just recollection I guess is the best

02 way. You just saw it. It was on there. You saw

03 it. You were writing a number on it so you saw it.

04 And it was -- it just became recognizable with the

05 SWEAT IT OUT -- cool compression and

06 SWEAT IT OUT.

07 Q. What are the responsibilities of the

08 Marlins' equipment managers?

09 A. They're -- they're involved in

10 basically purchasing all things baseball. They

11 do -- they usually help in coordinate travel with

12 trucks and equipment trucks and transporting the

13 equipment. They're involved in the purchase of

14 baseballs, bats, uniforms, garments, uniforms,

15 undergarments; a lot of times shorts and T-shirts

16 are part of the -- part of the process as well as

17 far as cold weather gear, warm weather gear.

18 They're in charge or ordering all of that and then

19 distributing it to the players so that -- so that

20 in affect the team is, you know -- is in uniform.

21 They also go through -- you know, they

22 manage the clubhouse so they help with the food and

23 things like that, as well. It's just like athletic

24 trainers, their -- their role is all encompassing

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25 within the clubhouse.

01 Q. And how often did you interact with

02 the equipment managers?

03 A. We interacted with them every day

04 regarding different things. But every day when we

05 would interact with them they -- there was the

06 equipment manager and there was also -- and he

07 usually had a staff of two, three, four people,

08 maybe bigger. But the interaction with them was

09 daily. When you went on the road the head

10 equipment manager was usually the one that

11 traveled. Only one person would go on the road and

12 it was usually the head equipment manager with the

13 Marlins; every now and then it might be one of his

14 associates.

15 Q. Was there a purpose to those

16 interactions?

17 A. Just -- a lot of it is just

18 communication. It's a matter of making sure --

19 there is -- a lot of times there was equipment --

20 you know, he had his budget, we had our budget. A

21 lot of times there was equipment that was -- that

22 might kind of fall in a gray area in between -- who

23 orders the shin guard that protects you against

24 fouling a ball off. Who orders the elbow guard

25 that protects you from getting hit by a pitch.

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01 So he was always interested in getting --

02 getting things that might fall under his guise as

03 uniform, sliding it over to our responsibility as

04 injury or protective gear for the purpose of

05 keeping his -- you know, the budget separate I

06 guess for the lack of a better word.

07 Q. Now, while you were at the Marlins

08 how did the -- how did Nike products fit into the

09 Marlins?

10 A. That -- that -- that fell -- the Nike

11 products typically fell under the guise of

12 John Silverman who was our head of equipment. And

13 the -- again, the -- when you start talking about

14 what his role was, anything that was being

15 distributed to all 32 players -- or when a player

16 got called -- all 25 players and seven coaches or

17 when a player got called up in the minor leagues

18 and they're giving him gear, it was his -- you

19 know, he was the one that was distributing that.

20 And so the Nike products fell under him typically

21 and so they might be getting something directly

22 from, you know, the Nike contact that they had.

23 The SWEAT IT OUT products and the cool

24 compression products coming from Efraim were

25 much -- (Unstable Internet) -- a function of it was

01 injury-related, one; and then two, he was looking

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02 -- to protect his budget and not have -- we were --

03 when talked with -- you know, why we wanted to keep

04 Efraim away from the players to some extent, we

05 didn't want all -- have to purchase something for

06 all 32 players if it wasn't necessarily needed from

07 a cost standpoint.

08 Q. Now, how many of the years that you

09 were at the Marlins did the team have Nike gear?

10 A. I --I wouldn't know the answer to

11 that question. They had Nike gear in some form or

12 another. I mean, we were in -- we had Nike shirts

13 as part of our uniform for the athletic trainers.

14 Coaches had Nike shoe contracts, so there was Nike

15 gear in some form or another every year.

16 But they -- they had deals with

17 Major League Baseball where -- where the team were,

18 you know, distributing it and some of them were

19 exclusive. Other -- other people had deals that

20 were -- you know, a Rawlings guy might not be

21 allowed to wear Nike or something along -- or if an

22 Under Armour guy had a contract with Under Armour,

23 he wasn't allowed to necessarily wear Nike. So

24 some of the things that were visible had to be

25 closely monitored. And again, that fell -- really

01 fell under the department of the equipment manager.

02 Q. So you mentioned earlier coming upon

Total Number of Clips:1

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03 some Nike clothing in DICK'S, do you recall that

04 testimony?

05 A. Yes. It was again, right after I got

06 out, so probably 2017. It was pretty quick.

07 Again, I -- I -- I stepped down in April of 2016 and

08 it was within a year of stepping down; so 2016 or

09 2017.

10 Q. Did you say anything to Mr. Nathan at

11 the time?

12 A. No, I did not. Because I didn't

13 really have any interaction with him after I

14 stepped down. It was just something that I had --

15 I had made note of. And I know I would have said

16 something to him had I still been in the game

17 because I would have seen him, so I would have made

18 a statement to him. But I did not -- I didn't

19 speak with Efraim after I stepped down from the

20 Marlins.

21 Q. How long have you known about this

22 lawsuit?

23 A. Probably in the neighborhood of about

24 a year, year and a half. Maybe May of 2020; April,

25 May of 2020, right after COVID.

01 Q. So I'm sure you saw the DICK'S cool

02 compression signage before you found out about this

03 lawsuit?

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04 A. Oh, it was well -- It was well before
05 that. I haven't -- I didn't -- I didn't -- I
06 didn't see -- I didn't know about the lawsuit until
07 just a year, year and a half ago. And I saw in the
08 DICK'S Sporting Goods it was right after -- right
09 after I had gotten out. And again, I resigned in
10 2016 and so it would have been within a year of
11 that no doubt in my mind.

12 Q. Do you recall which DICK'S Sporting
13 Goods this was?

14 A. Yeah. It was a DICK'S Sporting Goods
15 on -- in Wellington, Florida which is -- I'm
16 trying -- well, it's in Wellington. DICK'S
17 Sporting Goods in Wellington, Florida.

18 Q. And do you recall --

19 A. It may be West Palm Beach, but I
20 think the address is Wellington. So it's a local
21 one from where I'm at.

22 Q. Are there multiple DICK'S Sporting
23 Goods in that area?

24 A. No.

25 Q. Okay. So at that DICK'S Sporting
01 Goods do you recall where the signage was?

02 A. It was over near the apparel section.

03 Q. Was it men's apparel or women's
04 apparel?

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05 A. Men's apparel.

06 Q. Do you recall anything about the

07 signage?

08 A. Just that it had the cool

09 compression -- kind of the blue logo -- the black

10 and blue wording and logo.

11 Q. Do you recall how it was displayed on

12 signage? In other words, was it on a hang-down

13 display, on a table display, some other sort of

14 display?

15 A. No. It was on like -- kind of like a

16 little table placarded display.

17 Q. Was it on some sort of glossy paper

18 or was it on some sort of --

19 A. I couldn't tell you that.

4. Page 38:22 to 39:05 (Running 00:00:32.745)

22 THE WITNESS: I couldn't tell you that in

23 detail.

24 BY MR. WAGNER:

25 Q. Did you have any question in your

01 mind at the time about that products' name having

02 cool compression in their -- strike that. Were you

03 unsure of whether that product with its cool

04 compression signage was related to SWEAT IT OUT's

05 garments when you saw it?

5. Page 39:10 to 39:22 (Running 00:00:38.321)

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10 A. That was the reference that I made.

11 You know, the reference or the association that I
12 made with it as I was walking by was that it was
13 with the SWEAT IT OUT/cool compression. And again,
14 specifically thought of Efraim at the time and his
15 products thinking that maybe -- maybe he had been
16 bought out or struck a deal or something like that
17 with Nike.

18 Q. What, if anything, do you recall
19 thinking about -- strike that. Do you recall
20 thinking about the composition of the clothing
21 based on the term "cool compression" when you saw
22 it?

6. Page 39:25 to 40:15 (Running 00:00:42.129)

25 THE WITNESS: Again, I didn't necessarily
01 make that association. It was just kind of -- I
02 didn't pick up that material. I didn't look to
03 stretch it out or do any of that stuff. I wasn't
04 looking to buy it, so I really didn't -- it was
05 nothing other than the -- the -- the -- seeing the
06 sign and kind of making the association of the cool
07 compression with the SWEAT IT OUT and with Efraim.
08 And that was really the only association. It
09 wasn't anything where I looked at it, checked it,
10 made any reference as to whether or not it was
11 actually SWEAT IT OUT -- actually SWEAT IT OUT

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12 material or anything like that.

13 Q. Outside of that, do you associate

14 cool compression with anybody other than Nike or

15 SWEAT IT OUT?

7. Page 40:18 to 41:04 (Running 00:00:24.981)

18 THE WITNESS: I really don't -- yeah, I

19 don't even necessarily -- I associate it --

20 associate the term cool compression with -- with

21 the SWEAT IT OUT products and Efrain. That's how

22 I've always -- that's just what I've associated it

23 with.

24 BY MR. WAGNER:

25 Q. Do you -- strike that. Have you

01 heard other companies refer to their products --

02 other than this Nike example -- as cool compression

03 in some way?

04 A. No.

8. Page 41:08 to 41:09 (Running 00:00:07.940)

08 Q. And how many compression brands have

09 you seen in your time as a head athletic trainer?

9. Page 41:12 to 41:17 (Running 00:00:18.140)

12 THE WITNESS: Numerous -- numerous --

13 numerous brands and numerous types. There are --

14 there are a lot of different manufacturers that

15 come up with different types of compression --

16 compression gear meant for recovery.

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Designation Run Report

CunninghamCross

Cunningham, Sean 08-25-2021

Cross Examination by Mr. Hynes 01:34:23

Total Time 01:34:23



41:19 - 44:7

Cunningham, Sean 08-25-2021 (00:03:18)

CunninghamCross.1

41:19 CROSS-EXAMINATION

41:20 BY MR. HYNES:

41:21 Q. Thank you, Mr. Cunningham. You seem
41:22 to have a pretty precise memory on some things. I
41:23 think one of the things that you said was that
41:24 Hanley Ramirez enjoyed using the Lontex products,
41:25 is that right?

42:1 A. Correct.

42:2 Q. Okay. I'd like -- and you're
42:3 confident in that testimony?

42:4 A. Yes.

42:5 Q. Okay. Could you please open the
42:6 documents that you have in front of you. It should
42:7 be like a little binder with a couple of tabs in
42:8 there.

42:9 A. Oh, it's got -- it's taped shut.

42:10 Hold on.

42:11 Q. Take your time. I'm sorry.

42:12 A. I have one binder, I believe.

42:13 Q. That's it. Yep.

42:14 A. Oh, okay.

42:15 Q. I'll try to be efficient with your
42:16 time here, sir.

42:17 A. Okay.

42:18 Q. Just let me know when you have the
42:19 binder out, Mr. Cunningham. I have one more
42:20 question.

42:21 A. I have the binder out.

42:22 Q. Okay. Perfect. So you -- I think
42:23 you also testified that players didn't find the
42:24 Lontex products too restrictive either, right?

42:25 A. Some did. Some -- some did.

43:1 Q. Okay. But not Mr. Ramirez?

43:2 A. Don't know for sure. The -- from the
43:3 standpoint of whether or not -- I didn't like using
43:4 it for upper body injuries because I found that to
43:5 be consistently too restrictive. I did like it for
43:6 lower body stuff; hamstrings, chronic hamstrings
43:7 and chronic hamstrings and chronic, you know, like

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43:8 the sports' hernia-type injury.
 43:9 Q. Okay. Well, you testified earlier
 43:10 that Mr. Hanley Ramirez did like the Lontex
 43:11 products but --
 43:12 A. I said he used the Log -- I believe I
 43:13 said he used the products.
 43:14 Q. I think you said he liked it, but if
 43:15 you want to -- you want to clarify that?
 43:16 A. I -- I -- again, with all of these
 43:17 products and with the players sometimes they like
 43:18 them and sometimes they don't.
 43:19 Q. Yeah, but you said earlier today --
 43:20 A. I would be more inclined to say --
 43:21 Q. I'm sorry. Go ahead.
 43:22 A. That's all right. Again, when you
 43:23 start talking about specifics I'd be more inclined
 43:24 to say I know -- I have an idea of some of the
 43:25 players that were using them, not all of the
 44:1 players that were using them. I know that
 44:2 sometimes it wasn't unusual for a player that said
 44:3 he liked something to stop using it. There was
 44:4 also -- it wasn't unusual for people that said they
 44:5 didn't like it to try -- try it again and like it.
 44:6 Q. Yeah. And it's hard remember that
 44:7 far back, isn't it?

44:9 - 44:15

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CunninghamCross.2

44:9 BY MR. HYNES:
 44:10 Q. I'm sorry, did you say -- is it hard
 44:11 to remember that far back which players liked which
 44:12 product or is it not hard for you?
 44:13 A. I think -- I think that I need to be
 44:14 careful about being specific about what I say
 44:15 there.

44:16 - 51:8

Cunningham, Sean 08-25-2021 (00:07:28)

CunninghamCross.3

44:16 Q. I think that's -- that's good advice.
 44:17 Can you flip behind DX916 in your binder, sir?
 44:18 A. 916?
 44:19 Q. Yes, sir.
 44:20 MR. WAGNER: Counsel, I have share screen
 44:21 here. I don't know if you want that on the

DX916.3

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44:22 recording.

44:23 MR. HYNES: I really don't. But I'm

44:24 putting it up for your benefit, so...

44:25 VIDEOGRAPHER: This is Spencer, the

45:1 videographer. The document doesn't show up on --

45:2 MR. WAGNER: Spence, did you say the

45:3 document doesn't show up even when you do share

45:4 screen?

45:5 VIDEOGRAPHER: It does not come out on the

45:6 final video.

45:7 MR. WAGNER: Okay. That -- that solves the

45:8 problem.

45:9 MR. HYNES: Yeah, there -- there wasn't a

45:10 problem there, but thank you.

45:11 BY MR. HYNES:

45:12 Q. You can look at DX916,

45:13 Mr. Cunningham. And if you flip -- you see at the

45:14 beginning document which has a little number at the

45:15 bottom, it has 39533 in the bottom right-hand

45:16 corner.

45:17 A. Say that again, I'm sorry.

45:18 Q. Sure. So I'm showing you a document

45:19 that's been marked as DX916.

45:20 A. Okay. I'm looking at that.

45:21 (DX916 identified.)

45:22 Q. Yeah. Do you see at the bottom

45:23 right-hand corner there's a little box that says

45:24 "Lontex Corp. vs. Nike, Inc." and then it has the

45:25 number DX916 in the bottom right-hand corner?

46:1 A. Okay. I see that, yes.

46:2 Q. And then beneath that there's another

46:3 number, 39531.

46:4 A. Yes.

46:5 Q. Are you with me?

46:6 A. Yes.

46:7 Q. Okay. Now, what I want you to do is

46:8 go two pages in to 39533.

46:9 A. Okay.

46:10 Q. And do you see that it's an email

46:11 from Lontex to you and the subject matter is

DX916.1

DX916.1.1

DX916.3

DX916.3.1

DX916.3.2

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46:12 "Hanley Ramirez shoulder".

DX916.3.3

46:13 A. Okay.

46:14 Q. All right. Do you recognize that

46:15 email?

46:16 A. Yes.

46:17 Q. Okay. What is that email?

46:18 A. That's an email from me to Efraim

46:19 regarding -- regarding conversation -- or I guess

46:20 just regarding communication between him and I

46:21 regarding getting some SWEAT IT OUT material.

46:22 Q. Okay. And then can you turn -- turn

46:23 back to the first page of this document which is

DX916.1

46:24 39531 of Exhibit DX916. Are you with me?

46:25 A. Okay. Yes.

47:1 Q. So the at the bottom there's an email

DX916.1.2

47:2 from Lontex to you and it says, "Hi Sean. Just

DX916.1.3

47:3 wanted to follow-up and see if Hanley Ramirez tried

DX916.1.4

47:4 the improved posture compression shirts we sent out

47:5 to you back in February. If so, please let me know

DX916.1.5

47:6 what his experience was."; do you see that?

47:7 A. Yes.

47:8 Q. Now, he calls the shirts improved

47:9 posture compression shirt, doesn't he?

DX916.1.6

47:10 A. Yes.

47:11 Q. It doesn't say cool compression

47:12 shirts, right?

47:13 A. No, it does not.

47:14 Q. Okay. So when you testified earlier

47:15 that Hanley Ramirez wore cool compression shirts,

47:16 was that accurate?

47:17 A. I -- I -- cool compression products.

47:18 Q. Okay. So is it your testimony that

47:19 the improved posture compression shirt is a cool

47:20 compression product?

47:21 A. Not necessarily. Again, at the time

47:22 there were some companies coming out with what they

47:23 call "smart wear" that were designed for postural

47:24 improvements.

47:25 Q. Okay. But this is Lontex, right?

48:1 A. Yes.

48:2 Q. Okay. So this is Lontex. And -- and
48:3 Efraim is the president of Lontex, right?
48:4 A. Yeah. I guess that's his role, yes.
48:5 Q. Well, you have look down at the end
48:6 of the email if you -- if you -- if you're not
48:7 sure.
48:8 A. Yes. I see it, yes.
48:9 Q. Okay. And so he's describing the
48:10 shirts he sent you for Hanley Ramirez not as cool
48:11 compression shirts but as improved posture
48:12 compression shirts, right?
48:13 A. Okay.
48:14 Q. And you reply to him, right -- you
48:15 reply, "Unfortunately Hanley did not like the
48:16 compression shirt.", right?
48:17 A. Right.
48:18 Q. Okay. So does that refresh your
48:19 recollection that contrary to your prior testimony
48:20 that Hanley Ramirez actually did not like the
48:21 Lontex product?
48:22 A. That particular product, yes.
48:23 Q. Okay. So your memory was a little
48:24 bit flawed about Hanley -- Hanley Ramirez, right?
48:25 A. Well, I think -- and again, I'm not
49:1 sure exactly what I said earlier, but I think I
49:2 was -- I thought I was pretty clear about the fact
49:3 that I liked and found that they liked the lower
49:4 body stuff much better than the upper body stuff.
49:5 Q. So is it your testimony that you
49:6 bought lower body products for Hanley Ramirez?
49:7 A. Yes.
49:8 Q. Okay. What lower body products did
49:9 you buy for Hanley Ramirez?
49:10 A. Hamstring -- the ones that the
49:11 players liked were basically the pant leg sleeves.
49:12 Q. Pant leg sleeves?
49:13 A. Yeah. They were pants and we had --
49:14 we had short and -- we had short and long pants.
49:15 Q. Okay. Okay. Good. Let's get to
49:16 that. All right. One more question. I just --

DX916.1.7

clear

49:17 you said -- you testified earlier that you put the
49:18 player's number on the tags of their Lontex gear;
49:19 is that right?
49:20 A. That was usually how it was done,
49:21 yes.
49:22 Q. Okay. Is it your testimony that you
49:23 personally put the numbers on every single tag for
49:24 every single Lontex garment?
49:25 A. No.
50:1 Q. Whose job was that primarily?
50:2 A. It wasn't anyone's job, it was
50:3 just -- it was something that -- it might be
50:4 something I did, it might be something that the
50:5 equipment people did.
50:6 Q. Okay. So how many tags --
50:7 A. It might be something that the
50:8 assistant athletic trainer did, Mike Kozak. It
50:9 might be something that any one of the clubhouse
50:10 people might have done.
50:11 Q. Okay. So let's just -- let's divide
50:12 that up. Okay? So it's your testimony that
50:13 Mike Kozak -- is that what you said his name was?
50:14 A. Yeah. He was -- my assistant trainer
50:15 was Mike Kozak.
50:16 Q. Okay. So Mike Kozak might have put
50:17 the number on the tag, right?
50:18 A. Correct.
50:19 Q. For the Lontex product.
50:20 A. It's possible.
50:21 Q. Yep. And the clubhouse hands -- is
50:22 that what you said? I don't want to use the wrong
50:23 term.
50:24 A. Yeah. The clubhouse, the equipment
50:25 manager or some of his -- or some of the other
51:1 clubhouse personnel may have, as well.
51:2 Q. Okay. During your time at the
51:3 Marlins how many equipment mangers were there?
51:4 A. There was one.
51:5 Q. What was his name?
51:6 A. John Silverman.

51:10 - 53:8

51:7 Q. Okay. So John Silverman may have
51:8 been the one who put the number on the tag?

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CunninghamCross.4

51:10 THE WITNESS: He may have.

51:11 BY MR. HYNES:

51:12 Q. Yeah, okay. I'm just asking you

51:13 testified earlier that any number of people would

51:14 put numbers on the tag of the garments used by the

51:15 players, right?

51:16 A. That's certainly possible, yes.

51:17 Q. All right. And one of those people

51:18 is Mike Kozak, right?

51:19 A. Correct.

51:20 Q. Another one of those people is

51:21 John Silverman, right?

51:22 A. Correct.

51:23 Q. Who else worked in the clubhouse

51:24 that -- that put numbers on garment tags?

51:25 A. That number is -- it could have been

52:1 any one of the clubhouse personnel.

52:2 Q. How many clubhouse personnel worked

52:3 at the --

52:4 A. It's varied -- it's varied -- it's

52:5 varied from year to year. He usually had a staff

52:6 of three or four. That staff changed, as well.

52:7 Q. Every year? Did it change --

52:8 A. No, it didn't change every year, but

52:9 there were new people that came in.

52:10 Q. Okay. So you were -- how many -- can

52:11 you estimate for me how many clubhouse personnel

52:12 were there during your tenure -- tenure apart from

52:13 Mr. Kozak and Mr. Silverman?

52:14 A. Maybe -- maybe six to eight clubhouse

52:15 personnel.

52:16 Q. All right. So then that's a total of

52:17 11 different people that put the numbers on the

52:18 tags of the Lontex --

52:19 A. Yes.

52:20 Q. -- garments?

52:21 A. Yes. But it was usually -- it was

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52:22 usually myself or Mike Kozak.

52:23 Q. Okay.

52:24 A. Because we were the ones -- we were

52:25 the ones that were handing them the gear. And I'm

53:1 not saying we did it every time, but typically it

53:2 was us. That was kind of the first. Every now and

53:3 then something might slip through us in which case

53:4 if -- if -- if the clubhouse personnel recognized

53:5 it was a piece of equipment that didn't have a --

53:6 didn't have a number in it they might -- you know,

53:7 they might add the number. Because again, that was

53:8 the identification process.

53:9 - 59:25

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CunninghamCross.5

53:9 Q. Okay. Can you go to the first

53:10 document in your binder there which is a document

DX904.1

53:11 that has DX904 on it?

53:12 A. Okay.

53:13 Q. Do you recognize this as an email

DX904.1.1

53:14 from Mr. Nathan to yourself? Mr. Cunningham?

DX904.1.2

53:15 A. Yes. I'm -- I'm reading the email.

53:16 Q. Okay, okay. Yeah. Go ahead.

53:17 A. Yeah, I do recognize that. Again,

53:18 just look -- at the end of the day, just looking at

53:19 the header it would say that it came to me and to

53:20 Mike Kozak and it's signed by Efraim so, yes.

DX904.1.3

53:21 Q. Okay. The subject line says,

53:22 "SWEAT IT OUT compression apparel". Do you see

53:23 that?

53:24 A. Yes.

53:25 Q. It doesn't say cool compression, does

54:1 it?

54:2 A. Correct.

DX904.1.4

54:3 Q. Okay. And then in the first sentence

54:4 there he says, "We have found that over the last 10

54:5 years compression apparel is available online" and

54:6 it goes on, right?

54:7 A. Correct.

54:8 Q. He doesn't say cool compression there

54:9 either, does he?

54:10 A. Correct.

54:11 Q. And in the last sentence he says,
 54:12 "Please review the attached brochure to review the
 54:13 TRUE COMPRESSION, all capitals, that -- that true
 54:14 compression, right?
 54:15 A. Yes.
 54:16 Q. Both words all caps, right?
 54:17 A. Yes.
 54:18 Q. Okay. He doesn't say cool
 54:19 compression either?
 54:20 A. Correct.
 54:21 Q. But true rhymes with cool, doesn't
 54:22 it?
 54:23 A. I don't think of it that way, but --
 54:24 Q. Both long U sounds; cool, true,
 54:25 right?
 55:1 A. I don't -- I don't associate it that
 55:2 way.
 55:3 Q. Okay. Can you -- and attached to it
 55:4 as you can see this email attached says,
 55:5 "Lontexbrochure2.pdf", right?
 55:6 A. I'm sorry, say that one more time.
 55:7 Q. Sure. If you look at the email under
 55:8 attachments it says, "Lontexbrochure2.pdf", right?
 55:9 A. I'm not -- I'm not --
 55:10 Q. No problem. Let me back up.
 55:11 A. Yes, I do see that. I'm sorry, I do
 55:12 that. I do see that.
 55:13 Q. No problem.
 55:14 A. Bear with me, I do you have trouble
 55:15 focusing right now.
 55:16 Q. No, no. I -- I should go more
 55:17 slowly, Mr. Cunningham. I'm moving too fast. I'll
 55:18 slow down. So it's definitely my fault. I
 55:19 apologize.
 55:20 So do you -- do you understand what
 55:21 attachment means-- the word attachment means in the
 55:22 top of an email like that?
 55:23 A. Yes. Yes.
 55:24 Q. Okay. So it says, "Lontex
 55:25 brochure2.pdf", right?

DX904.1.5

DX904.1.6

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56:1 A. Okay.

56:2 Q. Now, if you turn the page you're

DX904.2

56:3 going to see the attached brochure.

56:4 A. Okay.

56:5 Q. Do you recognize these two pages here

56:6 as a Lontex product brochure?

56:7 A. Yes.

56:8 Q. Okay. I just want to go through with

56:9 you briefly. So I'm looking at these two pages of

DX904.3

56:10 the brochure. And I'm just going -- I want you to

56:11 just walk through -- through this with me. So do

56:12 you know what SWEAT IT OUT is?

56:13 A. I'm not sure what you're asking.

DX904.2

56:14 Q. Do you know what -- have you ever

56:15 heard of the term "SWEAT IT OUT"?

56:16 A. Yes.

56:17 Q. Okay. What -- what does it mean to

56:18 you?

56:19 A. Means -- means what you do after you

56:20 have too much to drink one night -- but that's

56:21 not -- that's not necessarily -- I just always knew

56:22 his product to be SWEAT IT OUT.

56:23 Q. Okay. So you recognize that as a --

56:24 A. Yes.

56:25 Q. -- Lontex --

57:1 A. Absolutely. Yeah, his -- his product

57:2 was always -- always SWEAT IT OUT.

57:3 Q. All right. And then -- and then --

57:4 and then you testified earlier -- I thought you

57:5 testified that his product was also known as cool

57:6 compression?

57:7 A. Correct.

57:8 Q. Okay. So in this brochure do you see

57:9 SWEAT IT OUT in the brochure?

57:10 A. Yes.

57:11 Q. Okay. So if -- if I start on the

DX904.2.1

57:12 left-hand column here where it says, you know,

57:13 "900AK Performance Tights".

57:14 A. Yes.

57:15 Q. Are you with me on that left side?

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57:16 A. Yes.

57:17 Q. So you go down to the bottom of that

DX904.2.2

57:18 column, do you see two references to SWEAT IT OUT?

57:19 A. Yes. The sweatitout.com and the

57:20 SWEAT IT OUT with the logo.

57:21 Q. Right. And then if you go to the top

57:22 of the next column you see SWEAT IT OUT again,

DX904.2.3

57:23 right?

57:24 A. Correct.

57:25 Q. So that's three times. If you go

58:1 down that column you see the website there

58:2 SWEAT IT OUT, right?

DX904.2.4

58:3 A. Yes.

58:4 Q. That's four times. Then right below

58:5 that you see SWEAT IT OUT by Lontex Corp., right?

DX904.2.5

58:6 That's five times, right?

58:7 A. Right.

58:8 Q. And then below that you can see an

58:9 email address with sweatitout.com. So that's six

DX904.2.6

58:10 times, right?

58:11 A. Yes.

58:12 Q. And then if you fire over just to the

58:13 right-hand side there is two more SWEAT IT OUT's.

DX904.2.7

58:14 So seven and eight times, right?

58:15 A. Right.

58:16 Q. Just on this page. And then if you

58:17 go to the top of the right-hand column you see the

58:18 word TRUE COMPRESSION again, right?

DX904.2.8

58:19 A. Yes.

58:20 Q. All caps.

58:21 A. TRUE COMPRESSION, yes.

58:22 Q. And then below that you see the word

58:23 compression appears in the next three paragraphs

DX904.2.9

58:24 four times, correct?

58:25 A. I'm going to trust your math but,

59:1 yes.

59:2 Q. Okay. And there's actually another

59:3 SWEAT IT OUT in there I missed, so that's nine

DX904.2.10

59:4 times. But nowhere on here do you the words cool

59:5 compression, do you?

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59:6 A. No.

59:7 Q. All right. And if we go the next

DX904.3

59:8 page of this same brochure, you see SWEAT IT OUT

59:9 two more times in the bottom, one in each corner,

DX904.3.1

59:10 right?

59:11 A. Correct.

59:12 Q. Another TRUE COMPRESSION, in all

DX904.3.2

59:13 caps, in the bottom middle, right?

59:14 A. Yes.

59:15 Q. And then you can see Performance

DX904.3.3

59:16 Compression on the left-hand side; do you see that?

59:17 All caps -- just caps on the first letters.

59:18 A. Yes.

59:19 Q. But you don't see true -- excuse me,

59:20 cool compression anywhere on this page either?

59:21 A. Correct.

59:22 Q. But it's still your testimony that at

59:23 this time cool compression was what you associated

59:24 with the Lontex product, correct?

59:25 A. Correct.

60:3 - 60:3

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CunninghamCross.6

60:3 MR. HYNES: He just said okay.

60:4 - 66:16

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CunninghamCross.7

60:4 BY MR. HYNES:

60:5 Q. All right. Let's keep going. Let's

60:6 go to the tab DX906 in your binder, please, sir.

DX906.1

60:7 (DX906 identified.)

60:8 A. Okay.

60:9 Q. Let me know when you're there.

60:10 A. I think I'm there.

60:11 Q. Okay. So this is -- are you with me

60:12 on DX906, Mr. Cunningham?

60:13 A. I believe I am, yes.

60:14 Q. All right. So do you see at the

60:15 bottom email is from Mr. Nathan to yourself?

DX906.1.1

60:16 A. Correct.

60:17 Q. July 13, 2009?

60:18 A. Okay. Correct.

60:19 Q. And then at the top it's -- it's

DX906.1.2

60:20 another email from Mr. Nathan to yourself with an

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60:21 attachment this time that says, "Lontex Four-Panel

60:22 Brochure --

60:23 A. Okay.

60:24 Q. -- 11-2008".

60:25 A. Okay.

61:1 Q. Do you see that?

61:2 A. Yes.

61:3 Q. Okay. Now, in this top email you see

DX906.1.4

61:4 the word Lontex in the front line, right?

61:5 A. Yes.

61:6 Q. Okay. And then the email address is

DX906.1.5

61:7 @sweatitout.com, right?

61:8 A. Yes.

DX906.1.6

61:9 Q. And then the attachment you see the

61:10 word Lontex, right?

61:11 A. Correct.

61:12 Q. And then underneath Mr. Nathan's

DX906.1.7

61:13 title it says, "SWEAT IT OUT by Lontex, Corp."

61:14 A. Correct.

61:15 Q. Right? And then there's two more

DX906.1.8

61:16 references to SWEAT IT OUT in his auto signature

61:17 there; do you see that?

61:18 A. Oh, at the bottom.

61:19 Q. Yeah.

61:20 A. Yes.

61:21 Q. Okay. And there's no references to

61:22 cool compression in this top email, right?

61:23 A. Correct.

DX906.1.9

61:24 Q. Okay. And then in the bottom

DX906.1.10

61:25 email -- this is again from Mr. Nathan -- in the

DX906.1.11

62:1 third sentence he writes, "Choose the right

62:2 Performance Compression" with a capital P and a

62:3 capital C, garment to help players --

62:4 A. I'm not sure -- how, where are you

62:5 at? I'm sorry. I'm sorry.

62:6 Q. That's no problem. So can I take you

62:7 to the bottom email on this page, the second email.

62:8 A. Okay.

62:9 Q. Do you see it says July 13, 2009,

62:10 1:41 p.m.

62:11 A. Yes.

62:12 Q. Okay. And if you go to the third

62:13 line in the text there it says, "Choose the right

62:14 Performance Compression garment to help your

62:15 players make it through", right?

62:16 A. I see that.

62:17 Q. With a capital P and a capital C,

62:18 right?

62:19 A. Yes.

62:20 Q. Okay. So he's offering Performance

62:21 Compression garments to you, right?

62:22 A. Correct.

62:23 Q. He's not offering cool compression

62:24 garments to you, is he?

62:25 A. Not in this -- not in this email, no.

63:1 Q. Okay. In fact, if you go down a

63:2 couple more lines Performance Compression with a

63:3 capital P and a capital C is referenced three more

63:4 times, right?

63:5 A. Right.

63:6 Q. Tights; short; long-sleeve, right?

63:7 A. Yes.

63:8 Q. And he's not offering you cool

63:9 compression products here, is he?

63:10 A. No. That's not what it states, no.

63:11 Q. Okay. And do you see again -- I'm

63:12 directing your attention back to the top of the

63:13 page where it says attachment, "Lontex Four-Panel

63:14 Brochure"; do you see that?

63:15 A. Lontex Four -- yes, I do.

63:16 Q. Okay. And so now I'm going to take

63:17 you to the attachment. Okay? So if you turn the

63:18 page in your binder you're going to see a two-page

63:19 brochure.

63:20 A. Yes.

63:21 Q. All right. If we -- and this -- this

63:22 is the brochure that corresponds with the 11/2008

63:23 attachment, right?

63:24 A. 11/2000 --

63:25 Q. Yep. If you go back and look at the

DX906.1.12

DX906.1.13

DX906.3

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64:1 prior email.

64:2 A. July 13th? The July 13th? There's a

64:3 July --

64:4 Q. Yes, sir.

64:5 A. Okay. Yeah.

64:6 Q. Okay. I just want to make sure

64:7 you're with me. Now, if you look at the left-hand

64:8 column of the first page of this brochure --

DX906.3.1

64:9 A. Yes.

64:10 Q. -- you see Performance Compression

64:11 shirts, right?

64:12 A. Yes.

DX906.3.3

64:13 Q. And then there's some pictures of

64:14 shirts up there, right?

64:15 A. Yes.

64:16 Q. Are those the shirts that you

64:17 described as cool compression earlier?

64:18 A. Yeah. Those -- those are similar

64:19 shirts to what -- and again, the upper body stuff

64:20 body I didn't order nearly as much of but, yes.

DX906.3.1

64:21 Q. Okay. And then we have another

64:22 reference on the right-hand side to

64:23 TRUE COMPRESSION again in all caps; do you see

DX906.3.2

64:24 that?

64:25 A. Yes.

65:1 Q. What's -- do you know what the

65:2 difference is between TRUE COMPRESSION and cool

65:3 compression?

65:4 A. The -- what do you mean do I know the

65:5 difference?

65:6 Q. Well, you described Mr. Nathan's

65:7 products as cool compression products before.

65:8 A. That -- that was how he described

65:9 them, yes --

65:10 Q. Okay.

65:11 A. -- when he was giving -- giving the

65:12 different, you know, the speech and things like

65:13 that.

65:14 Q. So he's describing it as true -- his

65:15 products as TRUE COMPRESSION in this pamphlet.

65:16 He's also describing them as Performance
 65:17 Compression. I'm asking you, do you know what the
 65:18 difference is between Performance Compression,
 65:19 TRUE COMPRESSION and cool compression?
 65:20 A. Well, cool compression was -- was --
 65:21 was kind of how he referred to it and from the
 65:22 standpoint of -- when he was giving his different,
 65:23 you know, sales pitches I guess for lack of a
 65:24 better word. He would usually -- I mean, the
 65:25 compression was there. Cool compression was a term
 66:1 that he used when he was doing that.
 66:2 Q. Well, did you think he was referring
 66:3 to products that are different from the ones that
 66:4 are advertised in this brochure?
 66:5 A. No, no. I mean it's hard for me to
 66:6 say but, no. Not at the time I don't believe so.
 66:7 Q. All right. Again --
 66:8 VIDEOGRAPHER: This is Spencer the
 66:9 videographer, we have lost Mr. Wagner.
 66:10 MR. HYNES: Okay. I'm going to -- we're
 66:11 just going to have to take a little break off the
 66:12 record, Mr. Cunningham, until Mr. Wagner joins
 66:13 because that's the right --
 66:14 THE WITNESS: Okay.
 66:15 MR. HYNES: -- thing to do. Okay?
 66:16 THE WITNESS: Okay.

66:23 - 68:12

Cunningham, Sean 08-25-2021 (00:02:10)

CunninghamCross.8

66:23 VIDEOGRAPHER: Back on the record. Time is
 66:24 3:31 p.m.

66:25 BY MR. HYNES:

67:1 Q. Okay. Okay. Sorry. Mr. Cunningham,
 67:2 can we go back to the brochure that we were looking
 67:3 at which was attached to the email and attachment
 67:4 that we marked as DX906.

DX906.3.2

67:5 A. Okay.

67:6 Q. All right. Are you -- are -- let me
 67:7 see. All right. So we've been through the first
 67:8 page. Have you looked at the second page yet? Can
 67:9 I ask you to turn to the second page.
 67:10 A. Okay.

DX906.4

CunninghamCross

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67:11 Q. Do you see that at top where it
67:12 says -- top left it says, "1900 Performance
67:13 Shorts"?

DX906.4.1

67:14 A. Yes.

67:15 Q. And if you scroll down to the bottom
67:16 of that column it says, "This Performance
67:17 Compression short helps prevent injuries from
67:18 occurring"; do you see that?

DX906.4.2

67:19 A. Yes.

67:20 Q. Okay. So do you see that Lontex is
67:21 describing that short as a Performance Compression
67:22 short and not a cool compression short?

67:23 A. Yes.

67:24 Q. Okay. And then again, we have the
67:25 all caps TRUE COMPRESSION in the middle of the
68:1 bottom page of the second page of the brochure,
68:2 right?

DX906.4.3

68:3 A. Yes.

68:4 Q. And it doesn't say cool compression
68:5 there either, does it?

68:6 A. No.

68:7 Q. Okay. So is it fair to say that this
68:8 particular brochure references SWEAT IT OUT 13
68:9 times; compression without the word cool twice;
68:10 Performance Compression twice; TRUE COMPRESSION
68:11 twice, and cool compression zero times?

68:12 A. Yes.

68:13 - 70:14

Cunningham, Sean 08-25-2021 (00:03:36)

CunninghamCross.9

68:13 Q. All right. Let's go -- let's go to
68:14 the next document, sir, which is marked as -- hang
68:15 on -- DX907 is the next document in your binder I
68:16 think.

68:17 A. Okay.

68:18 Q. And do you -- actually, we can skip
68:19 that one, sir, I'm sorry. If you could go to -- if
68:20 you could go to the document that's DX913. We'll
68:21 skip a little bit ahead.

DX913.1

68:22 (DX913 identified.)

68:23 A. I think I'm there, yes.

68:24 Q. Do you recognize this as an email

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68:25 exchange between you and Mr. Nathan?

69:1 A. Yes.

69:2 Q. All right. Now, if you turn the

DX913.2

69:3 page -- this is DX913 -- if you turn to the back

69:4 you're going to see a SWEAT IT OUT logo back here;

DX913.2.1

69:5 do you see that?

69:6 A. Okay.

69:7 Q. And what are the words are kind of

DX913.2.2

69:8 above the sun there?

69:9 A. Cool performance wear.

69:10 Q. So it says, "cool performance wear",

69:11 it doesn't say "cool compression", right?

69:12 A. Yes.

69:13 Q. So Mr. Nathan's added the phrase to

69:14 his logo cool performance wear; do you recall that?

69:15 A. Yes.

69:16 Q. Do you recall any other phrases that

69:17 Mr. Nathan used with the word cool besides cool

69:18 performance wear and cool compression?

69:19 A. Not specifically, no.

69:20 Q. Okay. So it's now 2011 Sorry, this

DX913.1

69:21 email was sent in 2012. Do you recall Mr. Nathan

69:22 ever sending you an email or a brochure with the

69:23 words cool compression in them before 2012?

69:24 A. No, I do not.

69:25 Q. So your memory of his use of cool

70:1 compression is limited to oral -- oral

70:2 presentations that you testified that you heard him

70:3 give, is that right?

70:4 A. Correct.

70:5 Q. None of the marketing material he

70:6 gave contained the words cool compression, right?

70:7 A. None of the marketing material, no.

70:8 Q. None of the emails he sent?

70:9 A. I thought -- I thought there was cool

70:10 compression on tags.

70:11 Q. You thought?

70:12 A. A recollection.

70:13 Q. Okay. We'll get to that, sir.

70:14 A. Okay.

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70:15 - 73:11

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CunninghamCross.10

70:15 Q. Can we now go to DX915 in the binder?

DX915.1

70:16 (DX915 identified.)

70:17 A. Okay.

70:18 Q. Hang on for one second, I'm sorry.

70:19 A. Mm-hmm.

70:20 Q. All right. So do you recognize this

70:21 as another email from Mr. Nathan to you?

DX915.1.1

70:22 A. Yes.

70:23 Q. And the re line is "Skin Rash

70:24 Problems", right?

70:25 A. Yes.

71:1 Q. All right. Now, if we go down the

71:2 email do you see there's all caps in the word

71:3 SOLUTION with italics?

DX915.1.2

71:4 A. Yes.

71:5 Q. Excuse me -- yeah. Okay. Sorry, not

71:6 italics. Parentheses. Right above that he writes,

71:7 "This problem is related to socks, T-shirts,

71:8 compression garments, underwear and equipment made

71:9 with latex and rubber", right?

DX915.1.3

71:10 A. Yes.

71:11 Q. Okay. And he's referring to other

71:12 compression garments when he is talking about that,

71:13 right?

71:14 A. Let me look and reread.

71:15 Q. Sure. Yeah. Take your time.

71:16 A. Yeah. No, I don't want to speak for

71:17 Efraim and what Efraim's saying in the email.

71:18 Q. That's a fair question.

71:19 A. Yeah.

71:20 Q. So why don't you review it and my

71:21 question -- I'll withdraw the question and ask you

71:22 a different one which is, did you understand

71:23 Mr. Nathan to be referring to non-Lontex

71:24 compression garments when he said --

71:25 A. Yes.

72:1 Q. Okay.

72:2 A. Yes.

72:3 Q. All right. Thank you. And then he

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72:4 says, "Solution"; do you see that?

72:5 A. Yes.

72:6 Q. And he says, "The only garment to

DX915.1.4

72:7 wick moisture away for the life of the garment is

72:8 made from cool max fabric."

72:9 A. Okay.

72:10 Q. Do you remember I just asked you

72:11 whether you'd ever -- could ever recall Mr. Nathan

72:12 using the word cool other than cool compression and

72:13 cool performance wear?

72:14 A. Yes.

72:15 Q. Yeah. And you said you couldn't

72:16 remember him using the word cool to describe

72:17 anything else, right?

72:18 A. Right.

72:19 Q. Okay. But here he is using it to

72:20 describe his own garments cool -- with cool max

72:21 fabric, right?

72:22 A. Year.

72:23 Q. Do you ever recall him saying cool

72:24 max?

72:25 A. No. Not with the -- not with the

73:1 repetition that he did cool compression.

73:2 Q. Mm-hmm. And then the next sentence

73:3 says, "Results and healthy skin cool max dries

DX915.1.5

73:4 faster than any other fiber forever", right?

73:5 A. Right.

73:6 Q. And that's important for the heat,

73:7 right; for it to dry faster?

73:8 A. Yes.

73:9 Q. Okay. We can move on from that

73:10 document, sir. Bear with me for one second.

73:11 A. Mm-hmm.

73:12 - 76:20

Cunningham, Sean 08-25-2021 (00:03:27)

CunninghamCross.11

73:12 Q. Okay. So the email we just looked at

73:13 was DX915. It was dated 3/19/2012. And now I'd

73:14 like to direct your attention to DX919 which is an

DX919.1

73:15 email from Mr. Nathan to you dated February 15,

DX919.1.1

73:16 2013.

73:17 (DX919 identified.)

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73:18 A. Okay.

73:19 Q. Does this email look familiar to you?

DX919.1

73:20 A. Yes. Familiar in the sense that it's

73:21 sent to me and my email address so, yes.

73:22 Q. Yeah. And also it's kind of the

73:23 exact same email -- or pretty much the same email

73:24 he sent to you a year prior that we just looked at,

73:25 right?

74:1 A. Correct.

DX919.1.2

74:2 Q. Okay. And he says again underneath

74:3 solution -- he again referenced the cool max

DX919.1.3

74:4 fabric?

DX919.1.4

74:5 A. Correct.

74:6 Q. Do you see that?

74:7 A. Yes.

DX919.1.5

74:8 Q. And then he again says, "Cool max

74:9 dries faster than any other fiber", right?

74:10 A. Yes.

74:11 Q. So that also was a phrase that he

74:12 repeatedly used containing the word cool, isn't it?

74:13 A. In these two emails, yes.

74:14 Q. Okay. Let's go to the next document.

74:15 This is DX920.

DX920.1

74:16 (DX920 identified.)

74:17 A. Okay.

74:18 Q. Do you recognize DX920 from

74:19 Mr. Nathan to you dated March 21, 2013?

DX920.1.1

74:20 A. Yes.

74:21 Q. Okay. And then in the third

74:22 paragraph he says, "The compression garments by

74:23 SWEAT IT OUT made in the USA will do just that and

74:24 much more"; do you see that?

DX920.1.2

74:25 A. Yes.

75:1 Q. And he doesn't use the words cool

75:2 compression there either, does he?

75:3 A. Correct.

75:4 Q. Okay. And then if we -- he --

75:5 actually is directing you to some specific

DX920.1.3

75:6 products, isn't he?

75:7 A. Correct. Yes.

CunninghamCross

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75:8 Q. And he calls the first product

DX920.1.4

75:9 Performance Compression back support shorts, right?

75:10 A. Correct.

75:11 Q. Not cool compression?

75:12 A. Correct.

75:13 Q. The third one says, "Performance

DX920.1.5

75:14 Compression, thigh; groin; hip and knee support",

75:15 right? Also not cool compression, right?

75:16 A. Correct.

75:17 Q. And the next one is improved posture

DX920.1.6

75:18 compression short-sleeve -- shirt short-sleeve,

75:19 right?

75:20 A. Correct.

75:21 Q. Also not cool compression?

75:22 A. Correct.

75:23 Q. And then it says, "Arm supporter

DX920.1.7

75:24 compression sleeve", also not cool compression,

75:25 right?

76:1 A. Correct.

76:2 Q. Next one, "Elbow supporter sleeve",

DX920.1.8

76:3 also not cool compression?

76:4 A. Correct.

76:5 Q. Did you buy any of these products?

76:6 A. We probably didn't. I can't say for

76:7 sure. I -- I can't answer because we -- sometimes

76:8 we got some stuff on -- as samples, sometimes we

76:9 purchased some. So without looking at records I

76:10 wouldn't be able to tell you for sure.

clear

76:11 Q. Okay. So we've gone over a bunch of

76:12 emails where Mr. Nathan is advertising his products

76:13 to you and brochures where he's advertising to you,

76:14 and in not one of them has he used the phrase "cool

76:15 compression", right?

76:16 A. Correct.

76:17 Q. But your testimony is that he's

76:18 repeatedly used the phrase "cool compression" at

76:19 the PBATS conferences, correct?

76:20 A. Correct.

76:21 - 81:1

Cunningham, Sean 08-25-2021 (00:04:45)

CunninghamCross.12

76:21 Q. All right. Let's go to the DX923.

DX923.1

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76:22 Do you recognize DX923 as an email from Mr. Nathan

76:23 to you dated January 9 --

DX923.1.2

76:24 A. Yes.

76:25 Q. -- 2014? Okay. And he says -- and

77:1 also he's copied Mike Kozak also, correct?

DX923.1.3

77:2 A. In almost all of them he did.

77:3 (DX923 identified.)

77:4 Q. Okay. And you guys work together at

77:5 the --

77:6 A. Yeah. He was my assistant athletic

77:7 trainer, correct.

77:8 Q. Okay. Thank you for reminding me.

77:9 And he writes, "Sean and Mike, it was exciting to

DX923.1.4

77:10 see you at PBATS in Orlando this past December"; do

77:11 you see that?

77:12 A. Yes.

77:13 Q. Okay. So that's December 2013,

77:14 correct?

77:15 A. Correct.

77:16 Q. And your testimony here today is that

77:17 you -- I want to make sure I wrote this down -- you

77:18 said, "Without fail every time Mr. Nathan used the

77:19 phrase cool compression at the PBATS conferences",

77:20 right?

77:21 A. Correct.

77:22 Q. Okay. So this is a month after

77:23 the -- a month or less after the PBATS conference

77:24 that occurred in December of 2013 when he's writing

77:25 this email, right?

78:1 A. Yes.

78:2 Q. Okay. In the second sentence he

78:3 says, "Thank you for continuing to purchase

DX923.1.5

78:4 SWEAT IT OUT Performance Compression apparel",

78:5 right?

78:6 A. Yes.

78:7 Q. So even though your testimony is he

78:8 consistently used cool compression a month earlier,

78:9 he describes his apparel as Performance Compression

78:10 in this email, right?

78:11 A. Yes.

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78:12 Q. Could I direct your attention,
 78:13 Mr. Cunningham, to DX926. I'm sorry, DX927 is what
 78:14 I would like you to turn to.
 78:15 (DX927 identified.)
 78:16 A. Okay.
 78:17 Q. Did you say the PBATS conferences are
 78:18 typically in December each year?
 78:19 A. Yes.
 78:20 Q. Okay. All right. So this is an
 78:21 email -- do you recognize this as an email from
 78:22 Mr. Nathan to you in January of 2015?
 78:23 A. Yes.
 78:24 Q. Okay. I want to direct your
 78:25 attention to the attachments line. Remember at the
 79:1 top of the email; do you see that?
 79:2 A. Yes.
 79:3 Q. It says, "MLB
 79:4 Performanecompression.docx; compression socks and
 79:5 leggings..x and Lontex brochure2014
 79:6 finalNathan.pdf"; do you see that?
 79:7 A. Yes.
 79:8 Q. Okay. In this email today he wants
 79:9 to the make a suggestion to you about purchasing
 79:10 certain products, right?
 79:11 A. Yes.
 79:12 Q. Okay. And he talks about -- he says,
 79:13 "Attached you will find a photo catalog of our
 79:14 styles, a list of styles and descriptions of the
 79:15 advantage for each style, and see as compression
 79:16 socks style", right?
 79:17 A. Yes.
 79:18 Q. And then he has a suggested order for
 79:19 you below, correct?
 79:20 A. Yes.
 79:21 Q. Okay. This first one is the
 79:22 double-ply thigh groin hip support shorts, right?
 79:23 A. Yes.
 79:24 Q. Doesn't call that cool compression,
 79:25 does he?
 80:1 A. Not in this email, no.

DX927.1

DX927.1.1

DX927.1.2

DX927.1.3

DX927.1.4

DX927.1.5

80:2 Q. Not in this email. Not in any of the
80:3 emails, right?

80:4 A. Okay.

80:5 Q. Yeah. And the second one says,

80:6 "Double-ply thigh; groin; hip support Capri with
80:7 knee stabilizer", right?

80:8 A. Right.

80:9 Q. Okay. No cool compression there
80:10 either, right?

80:11 A. Correct.

80:12 Q. Okay. Let's go to the attachment

80:13 which you will be able identify -- and this is an

80:14 attachment to DX927. If you look at the number on

80:15 the bottom right-hand side it says 7847. Let me

80:16 know when you're there.

80:17 A. I don't -- I don't see -- I've got

80:18 the --

80:19 Q. Oh, you're right. I'm sorry. Let me

80:20 apologize, Mr. Cunningham. I'm going to have to

80:21 ask you to look at the screen for these

80:22 attachments.

80:23 A. Okay.

80:24 Q. They were advertently omitted from

80:25 your binder.

81:1 A. Okay.

81:2 - 86:15

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81:2 Q. We'll start at the top here, sir.

81:3 A. Okay.

81:4 Q. This says at the top of this

81:5 attachment which is the list -- it -- it looks like

81:6 a list of styles and descriptions of the advantage

81:7 of each style.

81:8 A. Okay.

81:9 Q. Does that make sense?

81:10 A. I'm following you. Mike, just bear

81:11 with me because this is a little harder for me to

81:12 follow. But, yes, I do you see that.

81:13 Q. We're going to go slow. Okay? I'm

81:14 not going -- Val won't move anything unless you say

81:15 you're ready to do so. Okay?

DX927.1.6

DX927.3

CunninghamCross.13

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81:16 A. Okay.

81:17 Q. All right. So at the top it says,

81:18 "SWEAT IT OUT Performance Compression" and that's

DX927.3.1

81:19 the title of all of these -- that's the title on

81:20 the top of all of these product descriptions,

81:21 right?

81:22 A. Yes.

81:23 Q. It doesn't say "cool compression" it

81:24 says "Performance Compression", right?

81:25 A. Correct.

82:1 Q. And did you ever hear him say,

82:2 "Performance Compression" at PBATS?

82:3 A. Maybe on occasion. I can't say

82:4 specifically because again, I just always

82:5 associated with -- with cool compression. That's

82:6 what stood out and seemed to happen more regularly.

82:7 And I can't say he didn't call it Performance

82:8 Compression he may have.

82:9 Q. He may have. All right. So here it

82:10 says, "Performance Compression" once at the top

82:11 right?

82:12 A. Yes.

DX927.3.2

82:13 Q. And then we -- then right below it it

82:14 says, "Performance Compression shorts", right?

82:15 A. Yes.

82:16 Q. That's two Performance Compressions,

DX927.3.3

82:17 right? And then right below that it says, "Full

82:18 length Performance Compression tights". So that's

82:19 three references to Performance Compression so far,

82:20 right?

82:21 A. Correct.

DX927.3.4

82:22 Q. All right. Then you're going to see

82:23 in the underlying -- so do you see, Mr. Cunningham,

82:24 the underlined sentence there?

82:25 A. Yes.

83:1 Q. "This is the best compression short

83:2 for baseball"?

83:3 A. Yes.

83:4 Q. Okay. He doesn't use the word cool

83:5 there, right?

CunninghamCross

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83:6 A. Correct.

83:7 Q. Okay. Two more references to

83:8 compression there without the word cool, right?

83:9 A. Correct.

83:10 Q. And they're describing his products,

83:11 correct?

83:12 A. Correct.

83:13 Q. Okay. Let's go to the next page. We

DX927.4

83:14 have another long-sleeve compression shirt where

DX927.4.1

83:15 he's describing his product without using the word

83:16 cool, correct?

83:17 A. Correct.

83:18 Q. Okay. And then the next one says,

83:19 "Improved posture short-sleeve compression shirt",

DX927.4.2

83:20 right?

83:21 A. Correct.

83:22 Q. No cool in that title, right?

83:23 A. Correct.

83:24 Q. And then the sentence right under

83:25 that it says, this capital "Performance", capital

DX927.4.3

84:1 "Compression shirt" to describe that product,

84:2 right?

84:3 A. Correct.

84:4 Q. It doesn't say cool compression,

84:5 right?

84:6 A. Correct. I'm sorry.

84:7 Q. And then if you -- if you look all

DX927.4.4

84:8 the way to the right we see that logo again and we

84:9 do have the word cool there but it doesn't say cool

DX927.4.5

84:10 compression it says, "cool performance wear",

DX927.4.6

84:11 right?

84:12 A. Right.

84:13 Q. And that's part of his logo, right?

84:14 A. Correct.

84:15 Q. Do you think that Mr. Nathan might

84:16 have said cool performance wear and Performance

84:17 Compression at PBATS and not cool compression?

84:18 A. Certainly possible, but not my

84:19 recollection.

84:20 Q. All right. Can you scroll down.

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Source

ID

84:21 Again we have reference to compression there;

84:22 compression shirt without a cool, right?

DX927.4.7

84:23 A. Correct.

84:24 Q. And the first sentence says again,

DX927.4.8

84:25 capital P "Performance", capital C "Compression

85:1 shirt" without the word cool, right?

85:2 A. Correct.

85:3 Q. Okay. Keep going. Very next product

85:4 again. Performance Compression but not cool

DX927.4.9

85:5 compression, right?

85:6 A. Correct.

85:7 Q. And then on the right -- if you just

85:8 look directly on the right there's a reference to

85:9 cool power and cool air.

DX927.4.10

85:10 A. Okay.

85:11 Q. Have you ever heard of them -- those

85:12 phrases used by Lontex?

85:13 A. Not -- not familiar with them, no.

85:14 Q. But they're right here in this

85:15 product description document though?

85:16 A. Yes, they are.

DX927.5

85:17 Q. All right. Let's go to the next

85:18 page. Compression socks and leggings. And if you

DX927.5.1

85:19 look under knee-high compression socks it says,

DX927.5.2

85:20 "Gradient compression socks"; do you see that?

85:21 A. Yes.

85:22 Q. It doesn't say, "Cool compression

85:23 socks", right?

85:24 A. Right.

85:25 Q. Do you know what gradient compression

86:1 socks means?

86:2 A. No.

DX927.5.3

86:3 Q. All right. And then you see cool max

86:4 again appears right there, right?

86:5 A. Yes.

86:6 Q. And then right to the right we see

86:7 that logo again with cool performance wear, right?

DX927.5.4

86:8 A. Correct.

86:9 Q. But no cool compression here either?

86:10 A. Correct.

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ID

86:11 Q. All right. And then, Mr. Cunningham,
86:12 you'll see again cool max; again cool power and
86:13 again cool air, but again, no cool compression,
86:14 right?

DX927.5.5

86:15 A. Correct.

86:16 - 87:25

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CunninghamCross.17

86:16 Q. This is going to be really hard for
86:17 you, I know. So I'm -- I'm going to try to make it
86:18 easier for you. All right?

86:19 A. Okay.

DX927.6

86:20 Q. Okay. Just to go back to the -- to
86:21 remind you. This is attached to the January 21,
86:22 2015 email that was sent, you know, the month after
86:23 your PBATS meeting.

86:24 A. Okay.

86:25 Q. If we go all the way to the right we
87:1 see TRUE COMPRESSION, again, right?

DX927.6.1

87:2 A. Right.

87:3 Q. But we don't see any reference to
87:4 cool compression, do we?

87:5 A. I don't, no.

87:6 Q. I'm going to make this easy -- I'm
87:7 going to make this a little -- I'm going to
87:8 short-circuit this because I know this is hard for
87:9 you to see. Second page, halfway through, in the
87:10 middle of the page, do you see there it says,
87:11 "TRUE COMPRESSION" again?

DX927.7

DX927.7.1

87:12 A. Right.

DX927.7.2

87:13 Q. And on the top left-hand corner of
87:14 the screen there it says, "This Performance
87:15 Compression short helps prevent injuries from
87:16 occurring" on the left-hand side all the way -- all
87:17 the way above the logo.

87:18 A. Yeah, I see it there. Yeah, "This
87:19 Performance Compression short helps prevent
87:20 injuries"; I see that.

87:21 Q. Yeah. So again, Mr. Nathan is
87:22 describing his products as Performance Compression
87:23 and TRUE COMPRESSION but not cool compression,
87:24 right?

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88:1 - 105:25

87:25 A. Yes.

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CunninghamCross.14

88:1 Q. All right. Let's go to 931 in your

88:2 binder, Mr. Cunningham. Thankfully I think that

DX931.1

88:3 will be the end of that.

88:4 (DX931 identified.)

88:5 A. Okay. I'm there.

DX931.1.1

88:6 Q. Okay. Do you recognize this as a

88:7 email from Mr. Nathan to yourself copied to

DX931.1.2

88:8 Mike Kozak?

88:9 A. Yes.

88:10 Q. And he's sending you samples, right?

88:11 A. Correct.

88:12 Q. And this is February 2016, right?

DX931.1.3

88:13 A. Yes.

88:14 Q. Now, did your -- did your tenure with

88:15 the Marlins end after the season or was it before

88:16 the end of --

88:17 A. It was actually April.

88:18 Q. April.

88:19 A. April of '16, yes.

88:20 Q. Okay. So this is February so you

88:21 were with the club for about two more months?

88:22 A. Yeah. Not quite that, six weeks,

88:23 yes.

88:24 Q. About six more weeks, okay. Do you

88:25 recall your last interaction with Mr. Nathan as a

89:1 member of the Marlins' club?

89:2 A. No, I do not.

89:3 Q. Okay. Do you another whether or not

89:4 this email exchange was your last interaction

89:5 with --

89:6 A. It may -- it may -- I don't know for

89:7 sure. It may very well have been. Our interaction

89:8 wasn't -- usually revolved around, you know, once

89:9 in -- you know, the winter meetings followed by

89:10 maybe spring training followed by Philadelphia

89:11 trips during the season. So this very well may

89:12 have been the last interaction, but I don't know

89:13 that for sure.

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89:14 Q. Okay. That's fair. So again we have

89:15 Mr. Nathan describing his products for you, right?

89:16 A. Yes.

89:17 Q. And number one, he says compression

DX931.1.4

89:18 socks, right?

89:19 A. Yes.

89:20 Q. Doesn't use the word cool, correct?

89:21 A. Correct.

DX931.1.5

89:22 Q. Number two he -- he -- he is talking

89:23 about legging mid-thigh compression and he doesn't

89:24 use the word cool, right?

89:25 A. Correct.

DX931.1.6

90:1 Q. And the third one says, "Performance

90:2 Compression" but he doesn't use the word cool

90:3 either, right?

90:4 A. Correct.

clear

90:5 Q. All right. Now, when was the next

90:6 time you talked to Mr. Nathan, communicated with

90:7 him in any way after February --

90:8 A. Yeah. We -- we -- to be honest --

90:9 after I -- after I stepped down we had very few

90:10 communications. There was -- and when I say few,

90:11 he -- he sent me a text or -- or called me, one of

90:12 the two, right after I stepped down just wanted to

90:13 make sure that everything was okay. And so that

90:14 would have been very early in April of 2016. And

90:15 there was no -- no further communication with him

90:16 until he contacted me in 2020 to see if I'd --

90:17 basically just reaching out just saying that there

90:18 was a -- you know, that the lawsuit was going on;

90:19 that he was having problems with -- with -- with

90:20 Nike.

90:21 Q. And what did he -- what did he say to

90:22 you about those problems?

90:23 A. Just that -- that he was suing Nike

90:24 and would I be willing to testify.

90:25 Q. Okay. Did he tell you why he was

91:1 suing Nike?

91:2 A. Yes, he did. Just that there was --

91:3 that he was a little guy suing -- trying to go with

91:4 the big guy. That they were stealing his -- you
 91:5 know, thought -- he felt they were stealing his
 91:6 idea with the SWEAT IT OUT products and the cool
 91:7 compression.

91:8 Q. Do you think Nike was stealing his
 91:9 idea?

91:10 A. I had already thought, as I mentioned
 91:11 in that trip in 2016 -- stealing his idea, I don't
 91:12 know if that's the right word. But I had thought
 91:13 that Nike had made some sort of arrangement with
 91:14 him based on that DICK'S visit back in what was
 91:15 probably 2016.

91:16 Q. That -- that DICK'S visit five years
 91:17 ago?

91:18 A. Yes.

91:19 Q. Let's talk about the DICK'S visit for
 91:20 a second. You said it was in Palm Beach?

91:21 A. West Palm Beach. The store is
 91:22 actually out in -- I don't know if it's a West Palm
 91:23 Beach address or a Wellington address.

91:24 Q. Okay. What were you shopping for?

91:25 A. I -- I -- I am a basketball -- I was
 92:1 coaching high school basketball so I was going in
 92:2 there for some scorebooks.

92:3 Q. Just some scorebooks?

92:4 A. Yes.

92:5 Q. What brought you to the apparel
 92:6 section?

92:7 A. It was just on the way in. It's --
 92:8 again, we were in the store. I had my son with me
 92:9 I believe and then -- it was just in the store.
 92:10 Nothing took me to the apparel section, I was just
 92:11 walking. Nothing specific took me there.

92:12 Q. Where in the DICK'S is this -- is
 92:13 the -- is the scoreboard section?

92:14 A. The scorebook section wouldn't be --
 92:15 depending on -- it's Belvedere -- Belvedere Road on
 92:16 one side and -- and I think it's Sansbury on the
 92:17 opposite side. So it's a northwest -- there's a
 92:18 northwest and an east/south. And basically if you

92:19 go into the northwest -- if you go into the
92:20 north -- what would be the north entrance of it,
92:21 the scorebooks would be over on the west side where
92:22 the apparel section is like straight ahead.
92:23 Q. Is it more than one floor?
92:24 A. Two floors.
92:25 Q. It's two floors, right?
93:1 A. Yes.
93:2 Q. Yeah. So did you need to take the
93:3 escalator?
93:4 A. No.
93:5 Q. Because there is an escalator in
93:6 there, right?
93:7 A. Yes, there is, to get to the second
93:8 floor.
93:9 Q. Yeah. But you didn't need -- you
93:10 didn't need -- you didn't need to go there?
93:11 A. No. Not for -- not for -- I don't --
93:12 I don't recall specifically. I do not think I
93:13 would need to go there. I recollect the sign being
93:14 on the first floor in the apparel section, and then
93:15 I was heading over to the left. I don't believe I
93:16 went to the upper floor that day. But I -- I can't
93:17 tell you for sure.
93:18 Q. Okay. So if you're -- if you're
93:19 walking down -- well, is the floor plan of that
93:20 DICK'S Sporting Goods arranged so that there is
93:21 kind of main walkways --
93:22 A. Yes.
93:23 Q. -- that would take you through the
93:24 floor?
93:25 A. Yes.
94:1 Q. And then the apparel section will be
94:2 a little more -- well, there will be less room
94:3 where the apparel is showcased, right?
94:4 A. Yes.
94:5 Q. Okay. So did you see the -- you
94:6 know, the sign that you saw was that in the apparel
94:7 section or was that in some kind of display along
94:8 one of those walkways?

94:9 A. It was -- I saw it off the walkway.
94:10 Q. All right. So it wasn't prominently
94:11 displayed on the walkway, is that fair?
94:12 A. Yeah. I -- I don't know what you
94:13 mean by prominently displayed, but --
94:14 Q. Let me -- let me make it a little bit
94:15 easier to understand. All right. So you walk into
94:16 DICK'S Sporting Goods and there's a walkway, you
94:17 know, straight ahead, right, that takes you into
94:18 the store?
94:19 A. Correct.
94:20 Q. All right. And then in the middle of
94:21 that way they sometimes have like display cases of
94:22 products that they just want put there for the
94:23 people to see on the way in, right?
94:24 A. Right.
94:25 Q. Okay. Was the sign you saw one of
95:1 those displays?
95:2 A. No. It was -- it was -- it was off
95:3 the -- it was off the main walkway and I saw it,
95:4 but I -- like I -- as I mentioned earlier, I didn't
95:5 go in it or even -- I wasn't there for apparel so I
95:6 didn't really investigate or go further or go into
95:7 the apparel section.
95:8 Q. All right. So how far away was the
95:9 sign from you when you saw it?
95:10 A. Hard to say. It's just hard to say.
95:11 Was it 15 feet? It wasn't that far. It wasn't
95:12 that far, but it wasn't right on the -- it wasn't
95:13 right on the main walkway.
95:14 Q. Okay. And what color -- what color
95:15 was the sign?
95:16 A. Hard to say.
95:17 Q. Okay.
95:18 A. Again, you're kind of -- and I get
95:19 everything that's at stake and everything else, but
95:20 it was -- it was there. It was off to the right
95:21 and I saw it. And my recollection of seeing it
95:22 was, "Oh, look, the -- Efraim must have struck a
95:23 deal" because it was the cool compression kind of

95:24 logo there on that sign.
95:25 Q. Okay. What color --
96:1 A. It would have been a white -- and
96:2 again, I'm under oath so I want to be careful what
96:3 say, but it would have been like a white sign
96:4 with -- kind of the logo and the cool compression
96:5 coming across in like a black or blue; and then I
96:6 headed over to the left to where I was going.
96:7 Q. Just trying -- I'm sorry that I
96:8 wasn't there and we don't have a picture of it, so
96:9 I'm going to have to keep asking you some questions
96:10 about the logo.
96:11 A. Yes.
96:12 Q. So you said -- when you say the logo
96:13 do you mean the swoosh?
96:14 A. No. It was like the cool compression
96:15 words.
96:16 Q. Okay. So it wasn't a logo it was
96:17 just the words cool compression?
96:18 A. Right.
96:19 Q. Were they stacked on top of one
96:20 another or was it like in a sentence?
96:21 A. Like in a sentence coming across.
96:22 Q. All right. So cool compression
96:23 across the sign, right?
96:24 A. Correct.
96:25 Q. And was it a white sign?
97:1 A. Yes.
97:2 Q. And what color were the letters?
97:3 A. Like a black -- it had like a black
97:4 and a blue tint to it. Like a black with a blue --
97:5 maybe blue trim or blue with a black trim.
97:6 Q. You mean like a round -- I'll just
97:7 use the C. Like the C had black around it and the
97:8 blue was in the middle or like blue was on the
97:9 outside and black --
97:10 A. Again, I don't -- it's hard for me to
97:11 say.
97:12 Q. Okay.
97:13 A. I wasn't looking at it specifically,

97:14 Michael. I was walking by it, I saw it. The
97:15 association that I made was the cool compression
97:16 and I immediately made it with Efraim's product.
97:17 And that was kind of the association -- the
97:18 association that I made. And I didn't think
97:19 anything of it. Never brought it up. Never did
97:20 anything after that because I just went about my
97:21 business. But my thinking at the time was, "Oh,
97:22 Efraim made -- you know, got a deal with Nike and
97:23 got himself put into a DICK'S Sporting Goods".
97:24 Q. Yeah. I heard you say that earlier.
97:25 A. That wasn't how he -- that's wasn't
98:1 really how he sold his stuff in my -- in my
98:2 dealings with him.
98:3 Q. No, it isn't. So other than -- I'm
98:4 sorry, I want to make sure I got this. So do you
98:5 remember whether it was the black on the -- black
98:6 trim in blue or blue in --
98:7 A. Yeah. That's what I'm saying, I
98:8 don't remember that.
98:9 Q. All right. So other than the words
98:10 cool compression in a sentence on a sign -- what
98:11 else was on the sign?
98:12 A. There was a -- there was a Nike
98:13 swoosh.
98:14 Q. Oh, there was a swoosh?
98:15 A. Because I knew -- well, I knew -- I
98:16 knew it was a Nike product. So -- so whether there
98:17 was swoosh or whether it just with -- or whether it
98:18 was on a -- or whether it was on a stand that had a
98:19 Nike swoosh next to it, above it -- but the
98:20 association that I made was that it was a Nike
98:21 product.
98:22 Q. Okay. So the Nike swoosh might have
98:23 been on a different sign next to cool compression?
98:24 A. Or above it or just with Nike gear.
98:25 Q. Okay. Well, did you look at the
99:1 gear?
99:2 A. No. That's what I'm saying.
99:3 Q. All right. So the Nike swoosh was on

99:4 a different sign than the cool compression?
99:5 A. That's what I'm saying, I don't know
99:6 whether it was on that sign or next to that sign,
99:7 but I connected the two.
99:8 Q. Okay. In your head you connected the
99:9 two. All right. Did you -- but you didn't go look
99:10 at the garment?
99:11 A. No, I did not.
99:12 Q. All right. Is that the only time you
99:13 ever saw the words cool compression in a --in a
99:14 store?
99:15 A. Yes.
99:16 Q. All right. Just that one time? That
99:17 one instance? That one --
99:18 A. Correct.
99:19 Q. -- off the -- off the runway on your
99:20 way to get the scoreboard?
99:21 A. Correct.
99:22 Q. Did you say anything to your son
99:23 about Mr. Nathan at that time?
99:24 A. No. No, I did not. He didn't know
99:25 Efraim.
100:1 Q. I hear ya, yeah. All right. Okay.
100:2 I want to take you now, sir -- well, let me go
100:3 back. So Mr. Nathan called you -- do you remember
100:4 when -- when he called you? Like I know -- so let
100:5 me make sure we have this right. We have the
100:6 February 2016 email that may have been your
100:7 communication with Mr. Nathan while you were a
100:8 member of the Marlins, right?
100:9 A. Yes.
100:10 Q. And then after you left the Marlins
100:11 he checked in just to make sure everything was
100:12 cool, right?
100:13 A. Yes.
100:14 Q. And that was the next time you spoke
100:15 to him after --
100:16 A. And it was very -- it was very
100:17 shortly after I had stepped down, yes.
100:18 Q. Makes sense. Very kind of him. And

100:19 then after that happened the next time you heard
100:20 from him is when he contacted you for -- to ask for
100:21 your assistance in this lawsuit?

100:22 A. He had asked me if I would be willing
100:23 to testify, yes.

100:24 Q. Yeah. Okay. Did he -- did he -- he
100:25 tell you what he wanted you say?

101:1 A. No.

101:2 Q. Did you have any idea what he meant
101:3 when he said --

101:4 A. Yeah, I did. I did -- I knew -- he
101:5 asked if I'd be willing to testify. I said, "What
101:6 are you talking about?" And he said, "My products
101:7 are -- you know, the cool compression and the
101:8 SWEAT IT OUT and Nike is trying to -- they tell me
101:9 that I didn't use that. And I did use -- you know
101:10 that I used that." And I said, "Yeah, you used it.
101:11 You said it every time you were in the -- every
101:12 time you were in the winter meetings, you stood up
101:13 and said that -- said that -- you know, said that
101:14 the products were -- you know, the stretchy
101:15 products were -- you stood up gave your spiel about
101:16 it and that there were -- you know -- what -- you
101:17 know, the cool performance." And he says, "Well,
101:18 if it's okay with you I'm going to have my lawyer
101:19 contact you."

101:20 Q. And what did you say?

101:21 A. I said -- I said, "That would be
101:22 fine."

101:23 Q. Okay. And when did that conversation
101:24 happen?

101:25 A. Specifically I couldn't tell you.

102:1 Maybe April -- April, May 2020. Late April, early
102:2 May 2020.

102:3 Q. And have you spoken to Mr. Nathan
102:4 since then?

102:5 A. Yes, I have. There's been two or
102:6 three conversations and it was essentially that --
102:7 it was essentially -- one of them was when --
102:8 because he had asked me when I'd be available or --

102:9 and we -- he had said there might be something in
102:10 June or July, and he had asked -- he was kind of
102:11 trying to get a feel for my schedule I think more
102:12 than anything; and so he had reached out and said
102:13 that. Another time he had said that the lawyer
102:14 would be calling about a schedule change because
102:15 again, initially we were talking I think dates; and
102:16 he was asking me what dates were good to -- to do
102:17 it -- to do it, whether it be a deposition or a
102:18 statement. And so I had given him what my schedule
102:19 was going to be. I was wide open in June. I was
102:20 scheduled to travel the whole month of July and I
102:21 knew July would be bad.

102:22 Q. So you had two or three conversations
102:23 with Mr. Nathan about this litigation?

102:24 A. Yes. And it was mostly -- not
102:25 mostly, the content was really strictly about
103:1 availability.

103:2 Q. Well --

103:3 A. And whether or not --

103:4 Q. -- the second two were. The first
103:5 one where he said he wanted you to testify --

103:6 A. Right. Right.

103:7 Q. -- cool compression, right?

103:8 A. Correct.

103:9 Q. Okay. And then did you end up
103:10 talking to his lawyer?

103:11 A. Yes.

103:12 Q. And that's Mr. Wagner, right?

103:13 A. Yes.

103:14 Q. Okay. Did you talk to anybody else
103:15 in Mr. Wagner's law firm or just Mr. Wagner?

103:16 A. Just Mr. Wagner.

103:17 Q. Okay. How many times have you talked
103:18 to him?

103:19 A. Maybe three or four total.

103:20 Q. Okay. Are they telephone?

103:21 Videoconference?

103:22 A. Telephone.

103:23 Q. Telephone? What did you guys talk

103:24 about?

103:25 A. We talked about a statement as far

104:1 as, you know, what my recollection was of the --

104:2 what my recollection was with the PBATS thing.

104:3 What my recollection was with regards to looking at

104:4 catalogs, kind of my -- what my recollection was to

104:5 the product and how it was -- how it was presented

104:6 by Efraim.

104:7 Q. Mm-hmm. And that was three or four

104:8 conversations about that?

104:9 A. No, no. Then -- other things really

104:10 revolved around whether or not I would be willing

104:11 to come to New York to testify; talking about a --

104:12 the possibility of what my preference was traveling

104:13 versus a Zoom deposition, and then scheduling about

104:14 that, as well.

104:15 Q. Mm-hmm. Did you guys talk about

104:16 whether you'd agree to appear at a live trial in

104:17 Philadelphia?

104:18 A. Yes, we did.

104:19 Q. And what did you say?

104:20 A. I said no because of my job.

104:21 Q. Which job is that?

104:22 A. I'm the athletic trainer at

104:23 Palm Beach Atlantic University right now.

104:24 Q. Okay.

104:25 A. And -- and the availability --

105:1 availability and -- even though I'm off the months

105:2 of June and July I knew I was going to travel the

105:3 whole month of July. And just with -- with things

105:4 going on I didn't want to travel for a in-person

105:5 just because of family time.

105:6 Q. Okay. So you're unavailable to

105:7 testify at trial in October because of your job and

105:8 family time?

105:9 A. Correct. But specifically my job.

105:10 But I don't even think we got to October as a

105:11 specific date, we may have. But at the time I

105:12 don't know if I knew a date was given to me. But I

105:13 wasn't really interested in traveling -- if --

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105:14 if -- if that was an option.

105:15 Q. Understood. But there's nothing

105:16 physically prevent -- preventing you from going to

105:17 Philadelphia to testify at a trial in October,

105:18 right? You don't have a medical problem or

105:19 anything like that?

105:20 A. Well, right now I -- I -- I have

105:21 stopped traveling because of the eye surgery, so

105:22 that becomes a problem. I just got out of jury

105:23 duty down here in Palm Beach County; I was excluded

105:24 from it. My vision right now is very affected.

105:25 Traveling isn't fun. Seeing things isn't fun.

106:1 - 122:25

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CunninghamCross.15

106:1 Q. Okay. All right. Can you turn to

106:2 DX935, please, sir?

DX935.1

106:3 (DX935 identified.)

106:4 A. Yes.

106:5 Q. All right. Do you see -- do you

DX935.1.1

106:6 recognize this an email from Mr. Wagner to you

DX935.1.2

106:7 dated May 18, 2020?

106:8 A. Yes.

106:9 Q. Is that your email address down

106:10 there?

106:11 A. Yes.

106:12 Q. Personal email address?

106:13 A. Personal email, correct.

106:14 Q. Okay. And did you search that

106:15 personal email address for any communications that

106:16 you may have had with Mr. Nathan?

106:17 A. Yes, I did.

106:18 Q. Okay. And you didn't have any email

106:19 address -- exchanges with him?

106:20 A. Correct.

106:21 Q. Okay. Do you have any text message

106:22 exchanges? I don't know if you're a texter. Any

106:23 text message exchanges with Mr. Nathan or

106:24 Mr. Wagner?

106:25 A. Well, I am -- I do not.

107:1 Q. Okay. All right. So this document

107:2 says, "Hi, Mr. Cunningham, my client, Mr. Nathan,

DX935.1.3

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107:3 is so appreciative of you. Per his request I am
 107:4 sending you a declaration for your review for the
 107:5 Lontex vs. Nike case. It is written based on our
 107:6 understanding of what you know, but I sent it in
 107:7 Word in case you need to make changes before
 107:8 signing, sending it back to me. Signed by email
 107:9 works perfect. Please do not hesitate to reach out
 107:10 with questions"; do you see that?

DX935.1.4

107:11 A. Yes.

107:12 Q. Okay. Do you have any -- do you know
 107:13 how Mr. Wagner obtained an understanding of what
 107:14 you knew?

DX935.1.5

107:15 A. We had spoken by phone.

107:16 Q. Okay. You had spoken prior to him
 107:17 sending you this declaration?

DX935.1.6

107:18 A. I had either spoken to him or to
 107:19 Efrain.

107:20 Q. Well, do you know which one?

107:21 A. I believe him.

107:22 Q. Mr. Wagner?

107:23 A. Yes.

107:24 Q. Okay. So your testimony is you had a
 107:25 conversation with Mr. Wagner prior to May 18, 2020?

108:1 A. I'm not sure about the specifics.

108:2 Q. Okay. So you may or may not have
 108:3 spoken with Mr. Wagner before he sent you this
 108:4 declaration, you're not sure --

108:5 A. Correct.

108:6 Q. -- is that fair?

108:7 A. Yes.

108:8 Q. Okay. Let's turn to the attachment
 108:9 attorney. Do you see where it says, "Attachment
 108:10 Draft Declaration Sean Cunningham"?

DX935.1.7

108:11 A. Yes.

108:12 Q. Okay. So who wrote this?

DX935.2

108:13 A. This is -- he -- had -- handwrote
 108:14 this and I edit -- I edited it some. What edits I
 108:15 made I'm not sure.

108:16 Q. We're going to go through that.

108:17 A. Okay.

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108:18 Q. Okay. All right. I want -- I want

108:19 to stick with this first. All right. I want -- I

108:20 want to direct your attention to Paragraph 6 of

DX935.2.1

108:21 this attachment that Mr. Wagner sent to you.

108:22 A. Okay.

108:23 Q. All right. In your prior -- in your

108:24 prior testimony when Mr. Wagner was asking you

108:25 questions, I think you said something like you had

109:1 been speaking to Mr. Nathan since the mid to late

109:2 2000's. And this says --

109:3 A. Even before then, yes.

DX935.2.2

109:4 Q. Okay. And this says, "In these

109:5 interactions consistently since at least 2008"; do

109:6 you see that?

109:7 A. Yes.

109:8 Q. Well, where did the 2008 come from?

109:9 A. That -- they come from -- where he

109:10 was trying to put a timeline on it and there was no

109:11 doubt in my mind that it -- that it was occurring

109:12 after, you know, we moved into the new stadium in

109:13 2002 and that was where I got -- got more involved

109:14 in purchasing as the head athletic trainer with the

109:15 Miami Marlins. So it came after that, but it was

109:16 before -- before -- you know, I knew that we moved

109:17 into the new stadium in 2012 and so...

109:18 Q. So you knew it was between 2002 and

109:19 2012?

109:20 A. And then -- and then I knew some of

109:21 the players that we had -- had used from the

109:22 standpoint of products. And so that's kind of

109:23 where the 2008 came from.

109:24 Q. Did you pick 2008?

109:25 A. No, I did not.

110:1 Q. All right. And then we see the words

110:2 in COOL COMPRESSION in all caps here technology,

DX935.2.3

110:3 right?

110:4 A. Yes.

110:5 Q. And that's what you've been

110:6 testifying about all day today, right?

110:7 A. Yes.

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110:8 Q. All right. Then in Paragraph 7 it
110:9 says, "In my experience over these conversations
110:10 with Mr. Nathan and listening to his presentations
110:11 since at least 2008" -- let's -- let's stop there.
110:12 So I think you testified earlier that you
110:13 definitely would interact with him at PBATS and
110:14 that was once a year, right?
110:15 A. Correct.
110:16 Q. Spring training sometimes, right?
110:17 A. Correct.
110:18 Q. And then when you came up to Philly
110:19 for your three series with the Phillies, you might
110:20 see him once or twice a year as part of that visit,
110:21 right?
110:22 A. Correct.
110:23 Q. All right. So I'll throw in -- even
110:24 throw in a spring training. So you're talking
110:25 about, you know, three or four times a year you saw
111:1 him?
111:2 A. Yes, about that. That's -- yeah,
111:3 that seems -- that's reasonable.
111:4 Q. And in PBATS he's kind of you said
111:5 delivering his spiel on his products, right?
111:6 A. Correct.
111:7 Q. Okay. Does he -- does he deliver his
111:8 spiel at spring training, too?
111:9 A. Well, yeah. Well he -- he doesn't do
111:10 it in the same forum, but he comes in and has
111:11 the -- does the same vernacular, yes.
111:12 Q. He says the same things at spring
111:13 training as he does at the conference?
111:14 A. From the -- yeah, very similar in
111:15 nature. He's got a -- he's got a -- he would come
111:16 in, and again, depending on exactly the form of it,
111:17 he might lay -- we would get the players -- we
111:18 would set up a time to meet with him while the
111:19 players were out on the field because we didn't
111:20 necessarily want him to have access to the players.
111:21 He would come in and maybe lay the product down on
111:22 our athletic training table and then he'd talk

DX935.3.1

DX935.3.2

111:23 about if he had new product or he would show us
111:24 some of the old product. And he would do the same
111:25 thing as far as, "Hey, feel this. Feel this." He
112:1 was proud of the way his product from the
112:2 stretchiness standpoint is. And then again, with
112:3 us being down in the heat in Florida he would -- he
112:4 would -- he would refer to it as cool compression.
112:5 Q. So three or four times a year for
112:6 eight years, that's 24 times, he gave you the same
112:7 spiel?
112:8 A. Very similar, yes.
112:9 Q. Wow. So in 7 here -- let me just go
112:10 back to that. So he gave you the same spiel 24
112:11 times over eight years where you say he
112:12 consistently used the word cool compression but he
112:13 never used that phrase in any of the brochures he
112:14 sent you or in any of the emails he sent you in
112:15 that same time period, is that your testimony?
112:16 A. Yes.
112:17 Q. All right. So in 7 here it says, "In
112:18 my experience over these conversations with
112:19 Mr. Nathan" -- I'm sorry, are you there? I didn't
112:20 want to get ahead of you.
112:21 A. Yes, I'm here.
112:22 Q. Okay. "In my experience over these
112:23 conversations with Mr. Nathan and in listening to
112:24 his presentations since at least 2008, Lontex cool
112:25 compression technology is the main item covered by
113:1 Mr. Nathan. And by hearing him he has always
113:2 referred to the cool compression technology by that
113:3 name. I have always understood cool compression to
113:4 mean the unique stretch that Lontex garments have."
113:5 Now, Mr. Wagner wrote that, right?
113:6 A. Correct.
113:7 Q. Okay. Now, when you say it's the
113:8 main thing -- the main item that he covered, you
113:9 mean that's the main item that he covered and it
113:10 wasn't Performance Compression, it wasn't
113:11 TRUE COMPRESSION, it wasn't cool --
113:12 A. No. His two -- his two selling

DX935.3.3

113:13 points to us or to me -- and I say us being myself
113:14 or Mike Kozak -- was the support, the stretchiness,
113:15 that it provided from an injury prevention
113:16 standpoint and then the cool compression or the
113:17 fact that it didn't make hot and cause some of the
113:18 skin rashes and some of the other things that were
113:19 referred to in some of the -- the different emails
113:20 he saw -- or pointed out earlier.

113:21 Q. Yeah, that stretchy stuff, right?

113:22 The unique --

113:23 A. Yeah. The stretch stuff and the cool

113:24 compression stuff both.

113:25 Q. Right. But he never wrote down cool

114:1 compression in any document that you've seen,

114:2 right?

114:3 A. No. Not to my knowledgeable, no.

114:4 Q. In fact, you have never seen the

114:5 words cool compression written down in a document

114:6 related to Mr. Nathan until Mr. Wagner sent you

114:7 this declaration, right?

114:8 A. Not my knowledge, no.

114:9 Q. Okay. Sorry, did you have something

114:10 to say there?

114:11 A. No that's fine. That's fine.

114:12 Q. The next -- the next paragraph in

114:13 this declaration Mr. Wagner sent you has a picture

114:14 of a couple of labels here; do you see those

114:15 labels?

114:16 A. Yes.

114:17 Q. Do you know where those labels came

114:18 from?

114:19 A. I recognize those as labels that were

114:20 on some of the SWEAT IT OUT products.

114:21 Q. Were they on the products that you

114:22 bought? Was this label -- is this a picture of a

114:23 product you bought?

114:24 A. It looks like one, yes.

114:25 Q. It looks like one. What kind of

115:1 product does that look like?

115:2 A. It looks like the tag that was on the

DX935.3.4

115:3 inside of these SWEAT IT OUT products that he sent.

115:4 Q. Yeah. I'm hearing you. Is that

115:5 shirt? Is that a pair of shorts? Is that an

115:6 elbow? What is that?

115:7 A. The -- the -- I can't tell you what

115:8 that particular one came off of. Again, the

115:9 products that we used are mostly the pants and the

115:10 shorts; and it looks like ones that were on -- it

115:11 looks like ones that I saw on pants and shorts.

115:12 Q. But you don't know whether this tag

115:13 is on a pair of pants, a pair of shorts, a shirt,

115:14 an elbow sleeve or any -- or other kind of product,

115:15 do you?

115:16 A. No, I don't.

115:17 Q. Okay. And you don't know when this

115:18 product was manufactured either, do you?

115:19 A. No.

115:20 Q. Okay. Or who took this picture?

115:21 A. Correct.

115:22 Q. All right. And the one on the left

115:23 says, "Small"; do you see that?

DX935.3.5

115:24 A. Yes.

115:25 Q. Have you ever ordered a small product

116:1 from Mr. Nathan?

116:2 A. I have not. That's just where the

116:3 size -- again, this was an identifying mark about

116:4 the size of the -- I took this to mean the

116:5 identifying mark of the size of the garment,

116:6 whatever the garment might have been. But I never

116:7 ordered a small. Doesn't mean I couldn't of, never

116:8 did.

116:9 Q. No. Just major league baseball

116:10 players don't wear smalls, right? I mean --

116:11 A. Right.

116:12 Q. -- as a general matter?

116:13 A. As a general matter, correct.

116:14 Q. Yeah. Okay. All right. Let's go to

116:15 the next page. Do you see Paragraph 10 here?

DX935.4.1

116:16 A. Yes.

116:17 Q. And it says, "I have reviewed the

DX935.4.2

116:18 examples below of Nike using cool compression in
 116:19 the product name and they make me believe that Nike
 116:20 is using Lontex's cool compression technology in
 116:21 these compression garments"; do you see that?
 116:22 A. Yes.
 116:23 Q. You don't reference that story about
 116:24 seeing cool compression in DICK'S Sporting Goods
 116:25 here though, do you?
 117:1 A. No.
 117:2 Q. Mr. Wagner didn't mention it either,
 117:3 right?
 117:4 A. No.
 117:5 Q. Is that statement true?
 117:6 A. Yes.
 117:7 Q. All right. I just want to make sure.
 117:8 So you're looking at this Ohio State stock football
 117:9 photograph --
 117:10 A. I'm sorry, when you say, "Is that
 117:11 statement true" is that what you're referring to?
 117:12 Q. Yeah.
 117:13 A. Yeah. Okay. Yes.
 117:14 Q. Do you believe it?
 117:15 A. Yes. The cool compression -- I
 117:16 associated cool compression with the SWEAT IT OUT.
 117:17 Q. Well, I'm asking you right now right
 117:18 where you're sitting, as you sit here today, when
 117:19 you look and you see this picture of this
 117:20 Ohio State -- or this man wearing this Ohio State
 117:21 garment that says, "Stock Football" and it says
 117:22 "Pro Cool Compression Half-Sleeve Top", just that
 117:23 photograph, that makes you think -- that makes you
 117:24 believe Nike is using Lontex technology?
 117:25 A. Yes. Because I associated Lontex's
 118:1 stuff with cool compression.
 118:2 Q. All right. Have you ever handled
 118:3 that garment?
 118:4 A. No, I have not.
 118:5 Q. You do think you could tell if you
 118:6 handled it whether it was a Lontex product versus
 118:7 another --

DX935.4.3

DX935.4.4

DX935.4.5

118:8 A. Yes. I -- I believe I could given
 118:9 the -- given the quality of the -- or not the
 118:10 quality but the characteristics would be a better
 118:11 word -- the characteristics of the SWEAT IT OUT
 118:12 products.

118:13 Q. All right. Have you ever seen that
 118:14 picture of that Ohio State -- that guy wearing that
 118:15 Ohio State shirt before Mr. Wagner sent it to you?

118:16 A. No.

118:17 Q. Do you know where it comes from?

118:18 A. No.

118:19 Q. All right. There's another picture
 118:20 below that that says, "Nike Pro Cool Compression
 118:21 Half-Sleeve Top, \$30"; do you see that?

118:22 A. Yes.

118:23 Q. Have you ever seen that before

118:24 Mr. Wagner sent it to you?

118:25 A. No.

119:1 Q. Okay. And that also makes you
 119:2 believe that Nike is using Lontex's cool
 119:3 compression technology?

119:4 A. Well, I -- I take a look at that and
 119:5 I see the price and I wonder what the -- to me that
 119:6 would lead me to believe what the deal is. What's
 119:7 the difference between that and -- and the Lontex
 119:8 product? Because, you know, just from a pricing
 119:9 standpoint we weren't getting any of the Lontex
 119:10 product for \$30.

119:11 Q. Yeah. So did it -- or does it or
 119:12 does it not lead you to believe that Nike is using
 119:13 Lontex cool compression technology?

119:14 A. I would -- I would -- I would have to
 119:15 look at it. The cool compression I -- I -- when I
 119:16 see the word cool compression I associate that with
 119:17 Lontex. When I see the price, not so much so. I
 119:18 would want -- I would want to feel it and see it
 119:19 and figure out what the quality was.

119:20 Q. All right. So, if we go to the next
 119:21 page you see a Nike logo and then there's a
 119:22 baseball -- a guy playing baseball there; do you

DX935.4.2

DX935.4.7

DX935.5.1

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119:23 see that?

119:24 A. Right. Yes.

119:25 Q. And then it also -- and then if you

120:1 look down to the left it says, "Nike Pro Cool

DX935.5.2

120:2 Compression, \$30" again?

DX935.5.3

120:3 A. Yes.

120:4 Q. All right. Had you -- had you seen

120:5 this picture and these words before Mr. Wagner sent

120:6 them to you?

120:7 A. No, I had not.

120:8 Q. All right. Is your answer any

120:9 different with this image as it is to the other?

120:10 A. No.

DX935.4.2

120:11 Q. Okay. So just to confirm, on these

120:12 Pages 3 and 4 of the declaration Mr. Wagner sent

120:13 you, you had never seen these pictures before he

120:14 sent them to you, right?

120:15 A. Correct.

120:16 Q. And he wrote in this declaration,

120:17 "That you have reviewed the examples below", and he

120:18 wrote that before you had even seen these pictures,

120:19 right?

120:20 A. Yes.

DX935.4.8

120:21 Q. And then he wrote, "I have

120:22 reviewed" -- Mr. Wagner wrote, "I have reviewed the

120:23 examples below of Nike using cool compression in

120:24 the product name and they make be believe that Nike

120:25 is using Lontex's cool compression technology in

121:1 these compression garments." So he wrote that

121:2 sentence before he had shown you the pictures,

121:3 right?

121:4 A. Correct.

121:5 Q. And so he wrote them --

121:6 A. Well, he -- he -- he sent that to me

121:7 for the purpose of review and making sure that --

121:8 reviewing the entire statement.

121:9 Q. I'm just asking you -- I'm just

121:10 asking a simple question. Did he send you these

121:11 images in a different email before he sent you the

121:12 declaration?

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121:13 A. No.

121:14 Q. Okay. So the declaration was already
121:15 prepared when you first saw these pictures?

121:16 A. For me to review, correct.

DX935.4.2

121:17 Q. Yeah. So do you have any
121:18 understanding of how Mr. Wagner could know that you
121:19 would be -- that you would look at these pictures
121:20 and think anything about them?

121:21 A. Because I believe we had had a
121:22 conversation just prior to that to kind of go over
121:23 the -- the concept of, you know, what the lawsuit
121:24 was. When he had -- when they had asked - then
121:25 they were inquiring about whether or not I'd be
122:1 willing to testify.

122:2 Q. Yeah. I understand. So if you go to
122:3 the next two pages, which are Pages 5 and 6 in the
122:4 declaration Mr. Wagner drafted for you; do you see
122:5 these pictures?

DX935.6

122:6 A. Yes.

122:7 Q. Had you seen these pictures before
122:8 Mr. Wagner had put them in your declaration?

122:9 A. No.

122:10 Q. All right. The cool compression --
122:11 the Nike Pro Cool Compression pants at the top, do
122:12 you know where that image came from?

DX935.6.1

122:13 A. No.

122:14 Q. Is it 40 -- or 40 -- I don't know, is
122:15 it \$40 or \$48, I can't tell. But does that make
122:16 you believe that their Lontex -- they have Lontex
122:17 technology in them?

DX935.6.2

122:18 A. That doesn't in and of itself, but
122:19 the term cool compression makes me wonder.

DX935.6.3

122:20 Q. Okay. And then -- then you have the
122:21 shorts at the -- well, cool compression tights on
122:22 the next page is \$26.25. Does that make you
122:23 think -- think they have Lontex technology in them?

DX935.7.1

122:24 A. The pricing doesn't necessarily. The
122:25 term cool compression does.

123:1 - 124:13

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123:1 Q. All right. Go to DX936,

DX936.2

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123:2 Mr. Cunningham. Paragraphs 7 and 8 are still,
123:3 right?

DX936.3.1

123:4 (DX936 identified.)

123:5 A. Yes.

123:6 Q. Paragraph 9 has disappeared, right?

123:7 You took that one out. Or at least you took out
123:8 most of it, right?

DX936.4

123:9 A. Yes.

DX936.7

123:10 Q. Okay. And then you signed it under
123:11 penalty of perjury and you sent it in, right?

DX936.7.1

123:12 A. Yes.

123:13 Q. Okay. Okay. Mr. Cunningham, I -- I

123:14 am going to just take a few minutes to look at my
123:15 notes and go -- and take a quick break. So can you
123:16 give me five or 10 minutes to see if I have
123:17 anything else?

clear

123:18 A. Yes.

123:19 Q. Okay. Thank you.

123:20 VIDEOGRAPHER: Off the record counsel?

123:21 Okay. The time is 4:38 p.m. We are off the
123:22 record.

123:23 (Off the record for a break.)

123:24 VIDEOGRAPHER: Back on the record. The
123:25 time is 4:47 p.m.

124:1 BY MR. HYNES:

124:2 Q. Mr. Cunningham, did you have any
124:3 communications with anybody about your testimony
124:4 during this deposition?

124:5 A. When you say -- no, I did not.

124:6 Q. Yeah. Did you -- did you speak to
124:7 Mr. Wagner just now or something like that?

124:8 A. No. No.

124:9 MR. HYNES: Okay. That's it. I have no
124:10 more questions subject to -- I'm sure Mr. Wagner
124:11 has a few questions for you and I might have a few
124:12 after him, but for now I'm done. Thank you.

124:13 THE WITNESS: Okay. Thank you.

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[Cross Examination by Mr. Hynes = 01:34:23](#)**Total Time = 01:34:23****Documents Shown**

DX904

DX906

DX913

DX915

DX916

DX919

DX920

DX923

DX927


DX931

DX935

DX936

Case Clips Detailed Report

10290_Lontex v Nike

 CUNNINGHAM, SEAN - VOL 1 - 8/25/2021 1 Clips (Running 00:13:33.349)

 CUNNINGHAM REDIRECT (Running 00:13:33.349)

1. Page 124:14 to 124:19 (Running 00:00:12.240).

14 REDIRECT EXAMINATION
15 BY MR. WAGNER:
16 Q. Mr. Cunningham, do you recall
17 spending about an hour with counsel going over a
18 number of exhibits that showed cool performance or
19 some other phrase, cool compression?

2. Page 124:22 to 126:10 (Running 00:01:56.220).

22 THE WITNESS: Yes, I do.
23 BY MR. WAGNER:
24 Q. Do you usually spend that much time
25 looking over a set of marketing material from
01 SWEAT IT OUT?
02 A. No.
03 Q. In fact, how much time do you spend
04 looking at emails, marketing, SWEAT IT OUT
05 products sent to you by Mr. Nathan?
06 A. Not a lot. I would typically check
07 to see, one, who the email was from. I knew what
08 the product was, determine what the -- you know,
09 whether or not there was any new product or new
10 thing along with it, and determine whether or

Total Number of Clips:1
Total Number of Segments:14
Total Running Time:00:13:33.349

11 not -- determine what the price was and determine

12 whether or not we were in the need for anything

13 along that line.

14 Q. How important were the marketing

15 details provided in marketing emails sent by

16 Mr. Nathan to you in your opinion?

17 A. Not something that I -- not something

18 that I looked at closely. I was looking at -- I

19 was looking at what the product was and from the

20 standpoint of was it an upper body, was it a lower

21 body, you know, the socks -- you know, he just

22 pointed out the socks, that was a late addition.

23 You know, when you pointed out that email that was

24 something that wasn't on there initially. It

25 wasn't one of his initial product lines, so I might

01 have taken a quick glance at that. But pricing is

02 what I was -- you know, the two things I was

03 interested in were product type and pricing.

04 Q. And I noticed -- I made sure to write

05 it down. At one point after looking at all those

06 documents you had mentioned the winter meetings'

07 spiel that Mr. Nathan did. And you mentioned him

08 saying "cool performance". Did that term "cool

09 performance" mean anything to you before counsel

10 went over all those exhibits with you?

3. Page 126:13 to 126:21 (Running 00:00:18.050)

Total Number of Clips:1

Total Number of Segments:14

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13 THE WITNESS. Not specifically, no.

14 BY MR. WAGNER:

15 Q. Do you recall Mr. Nathan ever saying

16 the term cool performance at a winter meeting?

17 A. Not specifically, no.

18 Q. Do you recall him ever saying the

19 term cool performance in any setting other than the

20 exhibits that you've just seen?

21 A. No.

4. Page 126:25 to 129:23 (Running 00:03:52.819)

25 Q. How important were the marketing

01 emails -- strike that. How important to you were

02 the marketing materials that Lontex sent you

03 compared to the spiels that Mr. Nathan would give

04 at the winter meetings?

05 A. I don't -- I don't necessarily think

06 either were more important than the other. I

07 just -- the spiels had a tendency to resonate

08 because again, as a group it would be -- it might

09 be something that we talk about with the other

10 athletic trainers after the fact. It was a -- the

11 fact that it was kind of the same thing it was -- I

12 don't want to say a joke -- but a point of context

13 that, "Oh, Efraim's going to talk and it's going to

14 be -- you know, the same -- same conversation about

15 the SWEAT IT OUT material and the cool

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16 compression".

17 Q. Do you recall testifying about DX916

18 2012 email involving a sample that Hanley had been

19 provided?

20 A. Give me a second and let me pull that

21 up. DX916, is that what you said?

22 Q. Yes.

23 A. Okay. I think -- when you say, "Do I

24 recall" specifically I think I did kind of

25 reference the fact that we used the -- I liked

01 using the -- personally I liked using the lower

02 body better than the upper body garments. And a

03 lot of that had to do with patient -- patient

04 comfort.

05 Q. Do you know why in 2012 Hanley was

06 being singled out for a sample rather than any

07 other Marlins' players?

08 A. Yeah. He had had shoulder surgery.

09 He was undergoing -- just -- not knowing I'm

10 allowed to talk about it, is there HIPAA with -- is

11 there HIPAA with --

12 Q. This has all got a protective order

13 so we can designate whatever we need to

14 confidential.

15 A. Okay. All right. Good. But he

16 had -- he had had shoulder surgery. He had had a

Total Number of Clips:1

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17 labrum tear. He had a subluxing shoulder that he

18 had to -- that we were trying to nurse through.

19 Q. So when we're talking about one

20 exhibit, specifically DX904, I wrote down that you

21 at one point said you were having trouble focusing.

22 Because the jury wasn't privy to the conversations

23 you had with us counsel before, can you explain

24 what you mean by having trouble focusing?

25 A. Oh, yes. I had detached a retina and

01 I've had retina surgery within the last month.

02 I've actually had two eye -- three -- two eye

03 surgeries in the last six weeks now. And they've

04 reattached the retina. The procedure that was used

05 there's still oil in the eye, so I'm -- I'm -- my

06 left eye -- I'm basically not seeing out of my left

07 eye right now.

08 Q. So you're talking about visibly

09 focusing, not mental focusing, correct?

10 A. Correct; visible focus. I have

11 issues with depth perception, focusing, depth

12 perception. When my eye level changes it -- it

13 just takes a second for everything to catch up.

14 Q. You also have been talking about

15 DX915 and talked about non-Lontex compression

16 garments as things that Mr. Nathan would compare

17 SWEAT IT OUT garments to; do you recall that

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18 testimony?

19 A. Yes.

20 Q. To your understanding when Mr. Nathan

21 was making references to non-Lontex compression

22 garments, was Nike compression garments included in

23 that group?

5. Page 130:01 to 130:16 (Running 00:00:43.750).

01 THE WITNESS: Yeah, I -- I can't

02 specifically say -- I can't specifically say.

03 Sometimes -- they were different products that were

04 not -- and it might be whatever -- whatever was

05 laying around.

06 Q. Fair enough.

07 A. I can't specifically say it was or

08 wasn't a Nike product.

09 Q. Do you recall him ever making a

10 comparison to Nike compression garments?

11 A. Nike compression garments, no.

12 Q. When referred as a group other

13 people's compression garments, whatever he meant --

14 I'm asking your understanding -- do you understand

15 that group to include Nike compression products or

16 not?

6. Page 130:19 to 132:01 (Running 00:01:30.460).

19 THE WITNESS: Nike -- Nike, Under Armour

20 and there were some other products, as well.

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21 Bennick had some stuff out. Cramer had some stuff

22 out. Franklin had some stuff out.

23 BY MR. WAGNER:

24 Q. When you refer to Cramer, who is

25 Cramer?

01 A. Cramer is the name of a medical

02 supply company. They're famous for lineaments and

03 ointments. They also at one point in time tried to

04 bring in some compression garments into the -- into

05 the pool. And I have no idea what the timing of

06 that was.

07 Q. You spoke with counsel about DX935,

08 your declaration, specifically about some of the

09 pricing on some of the Nike images; do you recall

10 that testimony?

11 A. Say that again now. I'm sorry, I was

12 flipping to 935. Sorry.

13 Q. Yes. It had -- talking about DX935

14 you had spoken about -- provided some testimony

15 about the pricing details on some of the Nike

16 products that you had included in that declaration;

17 do you recall that testimony a moment ago?

18 A. Where I was talking about there being

19 a difference between the SWEAT IT OUT pricing of

20 Efraim's and Nike pricing?

21 Q. Yes.

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22 A. Is that what -- yes, I do recall

23 that.

24 Q. Would you assume that Nike's

25 production costs are the same of Lontex's for the

01 same garment?

7. Page 132:04 to 132:09 (Running 00:00:08.680).

04 THE WITNESS: No, I do -- I would assume

05 that.

06 BY MR. WAGNER:

07 Q. Would you assume that Nike's

08 production costs are higher or lower than Lontex?

09 A. Lower than Lontex.

8. Page 132:14 to 132:16 (Running 00:00:12.631).

14 Would it surprise you if Nike's products were two

15 or three times cheaper at retail because of costs

16 savings of Nike's production?

9. Page 132:19 to 133:06 (Running 00:00:30.099).

19 THE WITNESS: I would expect -- I would

20 expect them to be cheaper. It would be hard for me

21 to know really determine how much cheaper. But I

22 would expect them to be significantly cheaper just

23 from a production standpoint; from what little I

24 know on production and -- and size of companies. I

25 knew -- I knew that Efraim was a small company and,

01 you know, there might be more markup with that.

02 BY MR. WAGNER:

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03 Q. So when you saw Nike's products a
04 moment ago at \$30, would that disqualify those
05 products in your mind from containing the same cool
06 compression technology as SWEAT IT OUT?

10. Page 133:09 to 134:25 (Running 00:01:46.990)

09 THE WITNESS: Not -- not necessary. Again,
10 I would -- I would -- I would look to see what the
11 quality of that material was. I just wasn't in
12 a -- in a setting to do that. But if I were
13 purchasing I would like to compare the two.

14 BY MR. WAGNER:

15 Q. Do you have any financial interest in
16 this lawsuit?

17 A. No.

18 Q. Do you have any incentive to provide
19 testimony that's more favorable to one party?

20 A. No.

21 Q. Would you testify to anything that
22 was untruthful?

23 A. No.

24 Q. Would you sign a declaration under
25 penalty of perjury to anything that you believe was
01 untruthful?

02 A. Sorry. You confused me with that.

03 Q. Let me break it down. You recall the
04 statement shown to you by counsel that you had

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05 signed earlier in 2020, correct?

06 A. Correct.

07 Q. Did you provide any information in

08 there that you believe not to be true?

09 A. No.

10 Q. Would you have signed under penalty

11 of perjury that statement if you believed any of

12 the statements in there to be untrue?

13 A. No.

14 Q. And how well would you say you know

15 Mr. Nathan?

16 A. You see him as a vendor. I don't

17 know him very well. I couldn't -- from a personal

18 standpoint. It was strictly a professional

19 relationship. He was a vendor of a product that we

20 used and, you know, as the head athletic trainer I

21 needed to maintain that relationship because we

22 purchased from him.

23 Q. Do you know him well enough to opine

24 on whether he has a character of honesty or

25 dishonesty?

11. Page 135:03 to 135:24 (Running 00:01:02.681)

03 THE WITNESS: I mean, he was somebody -- he

04 was somebody that I trusted. I don't -- typically

05 I try not to do business with people that I don't

06 trust. He was -- you know, I found him to be

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07 reliable, dependable. I found him to be honest

08 about his products. You know, I didn't buy his

09 products because it was a good sale pitch. I

10 brought -- I bought his product because it was

11 working, what he -- you know, how he described his

12 product was -- was accurate. It served our needs

13 and did what -- did what he said it did and did

14 what we needed it to do.

15 BY MR. WAGNER:

16 Q. One moment. You also testified

17 earlier after looking at all the documents that it

18 was "certainly possible that something other than

19 cool compression was how Mr. Nathan reported things

20 at the annual conferences"; do you recall that

21 testimony?

22 A. Yes.

23 Q. Was that you speculating or you

24 testifying from your memory?

12. Page 136:02 to 136:15 (Running 00:00:37.669)

02 THE WITNESS: Yeah. It's -- it's just one

03 of those things where I can't -- I don't think I

04 can be realistically expect to know everything that

05 was or wasn't said somewhere. I can really only --

06 what I recall and how I associate things. That's

07 how I associate things. Did he -- if you asked me

08 if me did or didn't, I don't under -- under perjury

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09 I don't want to say that he -- I'm absolutely

10 positive he did or I'm absolutely positive he

11 didn't. I just know how I associate it.

12 BY MR. WAGNER:

13 Q. And that association that you formed

14 about his use of cool compression was based on may

15 years of firsthand interactions, correct?

13. Page 136:18 to 137:02 (Running 00:00:27.050)

18 THE WITNESS: Hearing -- hearing -- hearing

19 the spiel on a regular basis, on a yearly basis

20 several times. Whether it was two times, three

21 times or four times. Whatever it was. But very

22 rarely did I meet him where he didn't -- he didn't

23 do his stretchy and the cool compression narrative.

24 BY MR. WAGNER:

25 Q. Is that the type of regular

01 interaction that you believe would have any real

02 possibility of misremembering?

14. Page 137:05 to 137:10 (Running 00:00:14.010)

05 THE WITNESS: Again, in some -- that's what

06 I remember. That's what -- I mean, that's what I

07 remember from my interaction with SWEAT IT OUT and

08 with my interaction with Efraim; how I associated

09 it.

10 MR. WAGNER: No more questions.

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Total Number of Segments:14

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Designation Run Report

CunninghamReCross

Cunningham, Sean 08-25-2021

Re-Cross Examination by Mr. Hynes 00:02:20

Total Time 00:02:20



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137:11 - 139:16

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137:11 RECROSS-EXAMINATION

137:12 BY MR. HYNES:

137:13 Q. Mr. Cunningham, do you have any

137:14 actual knowledge of Nike's production costs?

137:15 A. No, I don't.

137:16 Q. Do you have any actual knowledge of

137:17 Lontex production costs?

137:18 A. Only in that he would reference to

137:19 how he had to make -- make a living and how -- no,

137:20 I don't to answer your question. No, I don't.

137:21 Q. What do you mean he had to make a

137:22 living? What -- what are you talking about?

137:23 A. He was -- he was -- he was a small

137:24 company. He would often -- "Oh, I'm not going to

137:25 come down to spring training because I have a

138:1 budget" might come out in a conversation that we

138:2 had. He might make a reference in spring training

138:3 -- or in -- at the winter meetings about how, you

138:4 know, cost, "Oh, I had to get my own hotel". He

138:5 would -- not often but at times he would talk about

138:6 his costs which isn't typically somebody that's --

138:7 you know, when EvoShield which is a bigger company

138:8 would come in, you wouldn't hear them reference it,

138:9 just as an example or a contrast.

138:10 Q. Are you talking about -- I mean --

138:11 A. Efraim -- I took Efraim to be a small

138:12 company and with that I took that to be that --

138:13 that his margin might be a little bit different.

138:14 Q. But you don't know what that margin

138:15 was, do you?

138:16 A. I have no idea what that margin was.

138:17 Q. And you don't have any experience

138:18 with production costs of garments?

138:19 A. Correct. Correct.

138:20 MR. HYNES: Okay. Thank you,

138:21 Mr. Cunningham.

138:22 MR. WAGNER: One question before we go off

138:23 the record. Mr. Hynes, do you intend to move any

138:24 of the exhibits into evidence?

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138:25 MR. HYNES: Yeah. I think they've been
139:1 authenticated and produced and all of the exhibits
139:2 have been marked and moved into evidence either now
139:3 or at the hearing.
139:4 MR. WAGNER: I have no objection to that.
139:5 Thank you for your time, Mr. Cunningham. I
139:6 think you can sign off. I think we have some
139:7 discussion to have with the court reporter.
139:8 THE WITNESS: All right. Thank you.
139:9 VIDEOGRAPHER: Would you like to go off the
139:10 record counsel?
139:11 MR. HYNES: Please.
139:12 MR. WAGNER: Yes.
139:13 VIDEOGRAPHER: Okay. The time 5:04 p.m.
139:14 This is the end of the videotaped deposition of
139:15 Sean Cunningham, volume one, dated August 25, 2021.
139:16 We are off the record.


Re-Cross Examination by Mr. Hynes = 00:02:20

Total Time = 00:02:20

Case Clips Detailed Report

10290_Lontex v Nike

 **DUGGER, KEITH - VOL 1 - 7/20/2021 1 Clips (Running 00:26:14.820)**

 **DUGGER DIRECT (Running 00:26:14.820)**

1. Page 05:21 to 15:13 (Running 00:12:25.089)

21 Will counsel please identify yourselves and
22 state whom you represent.
23 MR. WAGNER: Yes. This is Ben Wagner with
24 Troutman Pepper. I represent Plaintiff Lontex
25 Corporation. I have with me Rosa Namgoong who is a
01 summer associate with us who will be observing.
02 MR. HYNES: This is Michael Hynes. I'm a
03 lawyer with DLA Piper. With me are my colleagues Marc
04 Miller and Valerie Fadis. And welcome, Rosa.
05 MR. GAFFNEY: This is Brian Gaffney. I'm the
06 vice president/general counsel of the Colorado Rockies
07 Baseball Club, and I'm here on behalf of Keith Dugger.
08 APTUS VIDEO TECHNICIAN: The court reporter
09 today is Laura Corning, and she may now swear in or
10 affirm the deponent.
11 KEITH DUGGER,
12 having been first duly sworn was examined and testified
13 as follows:
14 DIRECT EXAMINATION
15 BY MR. WAGNER:
16 Q. Will you state your name for the record.

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Total Number of Segments:9

Total Running Time:00:26:14.820

17 A. Keith Dugger.

18 Q. And you understand you're here today for a

19 trial deposition?

20 A. I do.

21 Q. And the testimony you're giving today is under

22 penalty of perjury, the same as if you were appearing

23 directly in front of the jury?

24 A. Yes.

25 Q. Who do you work for?

01 A. Colorado Rockies Baseball Club.

02 Q. And what league are they in?

03 A. We're in the National League in the west

04 division.

05 Q. That's Major League Baseball?

06 A. That is a Major League Baseball club.

07 Q. And how long have you worked them?

08 A. Just shy of 30 years.

09 Q. What is your current job title?

10 A. I'm the head athletic trainer for the Major

11 League club.

12 Q. And how long have you been in the role of head

13 athletic trainer?

14 A. Since 2004.

15 Q. And what do you do in that role?

16 A. Well, my main job is prevention of injuries,

17 control all medical issues, rehabilitation, oversee all

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18 Minor League injuries, the day-to-day operations, the

19 communication between front-office management and

20 baseball operations.

21 Q. And how many people are on your team?

22 A. On our Major League team?

23 Q. On --

24 A. On the Major League team we have 40 -- 40

25 players available. Throughout our organization, it's

01 just shy of 200 that I oversee.

02 Q. Are you the only training staff, yourself?

03 A. No. I have two assistants here at the Major

04 League level and approximately eight or nine at the Minor

05 League level.

06 Q. And are you a member of any organization as a

07 part of your head-athletic-trainer position?

08 A. The National Athletic Trainers Association,

09 Professional Baseball Athletic Trainers association,

10 Colorado Athletic Trainers Association.

11 Q. And for the Professional Baseball association,

12 is the acronym for that PBATS?

13 A. That is correct.

14 Q. And how long have you been a member?

15 A. You're not officially a member until you're in

16 the Major League, so that would have been 1998.

17 Q. So as a general -- as a general matter, who

18 are the other members of PBATS?

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19 A. All professional head and assistant athletic

20 trainers, both the National League and American League.

21 There is associates, which are all the Minor League

22 athletic trainers.

23 Q. What's the purpose of the PBATS organization?

24 A. Well, the main purpose is we're a philanthropy

25 group. We're also the spokespeople for Major League

01 Baseball and -- I'm sorry. I got the other phone I

02 didn't hang up.

03 I'm the spokesperson for MLB, the players'

04 association. An example would be Spit Tobacco, Play

05 Campaign, Childhood Obesity. You've seen some of the

06 commercials on TV on baseball MLB channel. We also have

07 our educational foundation. We provide scholarships for

08 many undergraduate athletic trainers and graduate

09 athletic trainers and some of our own members of the

10 secondary school.

11 Q. Have you had any leadership roles in that

12 organization?

13 A. Yeah. I was the National League rep for 10

14 years and the assistant National League rep for

15 approximately eight years. So I -- I was on the board

16 roughly 18 -- 18 years, I guess.

17 Q. And do you know approximately what year that

18 started and when that board membership ended?

19 A. See, I have been off the board now for two

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20 years, so -- '19 was probably my last year on the board.

21 Now go back -- probably '07. Around '06 or '7.

22 Q. And during that time, did PBATS have any

23 annual meetings?

24 A. Yes. We -- we have an annual meeting every

25 year, usually at the baseball winter meetings which is in

01 early December.

02 Q. Are those meetings in person?

03 A. Those are in-person meetings.

04 Q. What are the purpose of those annual meetings?

05 A. Well, it's educational-based meetings. We

06 also go over new rules and regulations for the coming

07 season. And then we bring in vendors and products, and

08 we have our own little in-house seminar, and vendors will

09 speak to us about their various products.

10 Q. So what's the role of a vendor at an annual

11 meeting?

12 A. Well, we pick and choose what vendors

13 typically we -- we want to come to our seminar. We

14 usually have around 50 vendors a year that come, and it's

15 from -- anywhere from physical modalities -- which are

16 machines that help us with rehab -- to garments, to

17 compression, to nutritional supplements, to new types of

18 tape that are out there, any other new advancements in

19 the sports science world. And they just give short

20 presentations and sometimes they give us demos and

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21 sometimes they give us samples and, you know, the hopes

22 are that we purchase something from them.

23 Q. So as an athletic trainer and a member of

24 PBATS, are you familiar with any particular clothing

25 companies?

01 A. I am, yes.

02 Q. Which companies?

03 A. Well, Under Armour, Nike, SWEAT IT OUT,

04 Bioskin, X2, Adidas.

05 Q. I apologize. Please complete your answer.

06 A. X2 and Adidas.

07 Q. So when you say "SWEAT IT OUT," are there any

08 other names that you know that company by?

09 A. I do. I know it by "Lontex," "SWEAT IT OUT."

10 "COOLMAX" and "COOL COMPRESSION" were by association of

11 that company.

12 Q. And does the phrase "COOL COMPRESSION" mean

13 something to you?

14 A. It does.

15 Q. What does it mean?

16 A. Well, we've been educated by one of the

17 spokespeople for the company SWEAT IT OUT that, you know,

18 it's -- it's a fabric or a textile that is able to

19 stretch in multiple directions. It's able to wick sweat

20 away from the body, which allows faster evaporation. I

21 guess that's pretty much it.

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22 Q. And does sweat out -- are SWEAT IT OUT

23 products used by Rockies players?

24 A. They are on occasion.

25 Q. And who was that spokesperson you spoke of a

01 moment ago?

02 A. Efraim Nathan.

03 Q. Are you involved in the players using SWEAT IT

04 OUT products from the Rockies?

05 A. Yes, the majority of the time.

06 Q. And how so?

07 A. I have a running stockpile, plus most of my

08 garments from Efraim are kind of specialized to fit the

09 specific person. I also have plenty of other samples,

10 from socks to tights to -- to undersleeves to arm

11 sleeves. I've had various products from -- you know,

12 specialized, we call it "hip flexor padding" put in, or

13 buttocks padding. You know, just kind of the one-off

14 orders.

15 Q. And how long have your players been wearing

16 SWEAT IT OUT products?

17 A. Well, I know I've been ordering for at

18 least 15 years from them on and off.

19 Q. Does that mean your players have been using it

20 on and off for 15 years?

21 A. That is correct, yeah.

22 Q. And why SWEAT IT OUT products instead of other

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23 products available on the market?

24 A. Well, one is -- from the presentation and what
25 we've learned is that -- again, excuse me if I'm saying
01 this wrong -- the textile or the fabric stretches in
02 multiple directions versus, you know, the Spandex type
03 of -- or nylon type of thing that just only moves in one
04 direction.

05 The other thing is it's very durable for us.
06 It holds up. You know, one garment can last almost a
07 whole season, if not a half a season. These things are
08 being washed and used every day. These guys are very
09 rough on these type of garments.

10 Q. In your experience as an athletic trainer for
11 the Colorado Rockies, have you observed any benefits to
12 the players from using SWEAT IT OUT products?

13 A. Absolutely. I mean, just simple things, from
14 just the posture shirts that we've used, you know, where
15 the stitching and the -- and the -- I guess the way
16 Efraim develops the shirts for these guys to hold them in
17 a certain position. And again, the constant compression
18 where it's not squeezing them off, they're not cramping
19 wearing this type of product, because their legs do swell
20 during competition.

21 And sometimes we even put these guys in
22 this -- these garments to fly on airplanes. You know, if
23 we're trying to prevent contusion or strain, these --

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24 these guys will wear these products on flights, as far as

25 recovery.

01 Q. Any other benefits you can think of?

02 A. Well, again, one -- one of the key things from

03 this, the guys don't get too hot in this product. Even

04 though it's a thicker product compared to some of the

05 other vendors that are out there, it seems like the --

06 the moisture is being wicked away from their body, which

07 increases the evaporation. So the guys seem a little bit

08 cooler in this type of product, and it's -- and it's

09 comfortable to them.

10 Q. Have you noticed any benefits to their

11 performance?

12 A. I would say if anything can assist these guys

13 to stay on the field, then there's a benefit to their

14 performance.

15 Q. And do you attend spring training with the

16 team?

17 A. I do.

18 Q. How often?

19 A. Yearly since I've been in professional

20 baseball.

21 Q. So at least since -- what year would that be?

22 A. 1998 was my first year in professional

23 baseball.

24 Q. So how would you define COOL COMPRESSION?

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25 A. How would I define COOL COMPRESSION? Well,
01 COOL COMPRESSION to me is exactly what I just said:
02 It's -- it's a -- a product where the body is able to
03 wick the moisture; it's able to move in different
04 directions, stretch in different directions, to allow
05 maximum compression without choking off a certain body
06 part.
07 Q. Have you ever heard anyone refer to SWEAT IT
08 OUT's clothing technology as "COOL COMPRESSION
09 technology"?
10 A. One more time. Can you repeat the question?
11 Q. Have you ever heard anyone refer to SWEAT IT
12 OUT's stretch technology as "COOL COMPRESSION
13 technology"?

2. Page 15:16 to 19:11 (Running 00:05:07.440)

16 THE WITNESS: Yes. I've heard of people
17 associate COOL COMPRESSION with SWEAT IT OUT.
18 Q. (By Mr. Wagner) Who can you recall, sitting
19 here today?
20 A. Efraim Nathan.
21 Q. Anyone else?
22 A. Pretty much every Major League athletic
23 baseball trainer.
24 Q. In what settings did you hear Mr. Nathan refer
25 to "COOL COMPRESSION technology"?
01 A. Well, I've met with Efraim at our seminars,

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02 which are yearly, in the winter meetings. I've met with

03 him in person. He's come out to spring training to our

04 facilities. That's basically been his main talking point

05 is "COOL COMPRESSION" and the stretch of the material

06 from the very first time I've been associated with

07 Nathan.

08 Q. So let's break -- let's break that down.

09 You said "in-person." How far back do you

10 remember in-person meetings with Mr. Nathan having him

11 refer to clothing technology and COOL COMPRESSION?

12 A. Right around 2010 was the first time that I

13 ever saw him, and that definitely was at a PBATS seminar.

14 He presented his garments to us, gave us all samples.

15 You know, you -- you individually meet with

16 the vendors after they give their speech. So basically

17 each vendor has a time slot to talk about their product,

18 the benefits of their product; then you go up and you

19 actually have a few minutes for each team to go through

20 and meet with the -- the presenter.

21 Q. And I'm sorry if we spoke over each other a

22 moment ago.

23 At this first meeting around 2010 that you

24 said, the annual meeting, did he refer to the technology

25 of the clothing by any particular name?

01 A. "COOLMAX" has always been a stretch [sic] and

02 "lycra" and -- you know, the stretch in multiple

Total Number of Clips:1

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03 directions is how I associate SWEAT IT OUT.

04 Q. Was the term "COOL COMPRESSION technology"

05 used; do you recall?

06 A. Yeah. I -- I believe so, because it's the

07 only thing I can remember him ever saying from the very

08 beginning was talk about COOL COMPRESSION, and he was the

09 very first person that basically talked about body

10 fluids, sweat, being wicked away from the body in

11 evaporation.

12 Q. So other than these annual meetings -- oh, and

13 let me ask one more question. Are there any annual

14 meetings that you attended where Mr. Nathan presented

15 that you recall him having given a presentation without

16 using the term "COOL COMPRESSION" to describe his

17 technology?

18 A. Seminars or meetings? I guess --

19 Q. The annual meetings, the PBATS.

20 A. No. That's been one of his -- his spiels

21 since we've known him. You know, it's -- he's always

22 talked about the COOL COMPRESSION. There's been plenty

23 of meetings -- you know, just one-on-one conversations --

24 where he hasn't necessarily mentioned COOL COMPRESSION to

25 me.

01 Q. And are there -- where do you -- other than

02 the annual meetings, you said there were in-person

03 occasions where you would meet. What are you referring

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04 to?
05 A. Well, again, Efraim has come out to spring
06 training in various years. Not -- I don't believe
07 yearly, but majority of years, he's actually come out to
08 the facilities. He's come into the clubhouse in
09 Philadelphia when we've been in town. He's met me at the
10 hotel before, and in phone calls and text messages and
11 emails.

12 Q. So are you familiar with the appearance of
13 SWEAT IT OUT garments?

14 A. Yes.

15 Q. How -- how are you familiar?

16 A. I'm familiar with the stitching. I'm familiar
17 with most of the labeling that's in there, the type of
18 material that's used in most of the packaging.

19 Q. When was the first time you had SWEAT IT OUT
20 garments in your possession; do you recall?

21 A. Well, I know I have been ordering at least
22 since 2015/'16/'17, for sure, all the way up to present,
23 on and off.

24 Q. So you had mentioned earlier that you had been
25 buying from SWEAT IT OUT for 15 years. Did I recall that
01 right or am I mistaken?

02 A. No, that's correct, at least 15 years.

03 Q. So going back 15 years, were you the one that
04 would hold the garments in your hands or was it always

Total Number of Clips:1

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05 other people that dealt with the product?

06 A. It was me and usually some of my associates.

07 Q. And did you have an opportunity to observe the

08 front and back and inside of the product at that point?

09 A. Yes.

10 Q. And what do you recall about any sort of

11 phrasing that was included on the clothing?

3. Page 19:14 to 19:18 (Running 00:00:09.701)

14 THE WITNESS: The phrasing of the -- say that

15 again. I'm sorry.

16 Q. (By Mr. Wagner) Let me ask you it this way:

17 Do you recall there being any -- any words that appeared

18 on the garments?

4. Page 19:21 to 22:18 (Running 00:04:07.309)

21 THE WITNESS: I -- I remember seeing

22 "COOLMAX," "COOL COMPRESSION," "lycra," "SWEAT IT OUT."

23 Q. (By Mr. Wagner) And do you recall where the

24 phrase "COOL COMPRESSION" appeared on the SWEAT IT OUT

25 garments?

01 A. Yeah. I've seen it on packaging. I've seen

02 it also on the tags that are usually inside the garments,

03 you know, either along the side or up on the collar,

04 depending on what the garment is.

05 Q. And how long has it been that way?

06 A. How long has [sic] the garments had the

07 writing on it?

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08 Q. That COOL COMPRESSION on the tag on the

09 inside.

10 A. Well, again, since I've been ordering, that I

11 can remember, at least some of it.

12 Q. Okay. How often do you look at the labels or

13 what you call the tagging on the garments?

14 A. Well, if we're giving a player a specific

15 garment, I look at it right away. We usually write their

16 names on the tags, or nowadays they actually press their

17 initials or name on the tags so they can be identified.

18 But usually if I'm looking at the product and handing it

19 out, I'm looking at the label.

20 Q. And how regular of an occasion is that during

21 the season?

22 A. Well, it varies. It depends on how many

23 people I have in the garments. Like this year I probably

24 only have one person in the garment. But, you know, I'd

25 say, on an average, it's around four to five garments a

01 year that I'm handing out. Sometimes a little bit more.

02 Q. And is it just one time you're handing out

03 those garments or is it on a regular basis or something

04 different?

05 A. It could be multiple times during the year,

06 yeah.

07 Q. So what are the responsibilities of the team's

08 equipment managers?

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09 A. Well, the team's equipment manager, they've
10 got a big job. They order all the bats, balls, uniforms,
11 undersleeves, underwear. They help us out with the --
12 the packing for our road trips, meaning all my trunks,
13 all the players' bats. And they purchase equipment,
14 basically: the gloves, bats, balls, jockstraps,
15 cups. Anything associated with the day-to-day
16 operations, game -- flip-flops, shoes. I mean, I
17 could go on and on. If they wear it, the clubhouse
18 attendants usually order it, you know, including hats
19 too.

20 Q. So how often do the athletic-training staff
21 and equipment-managing -- -manager staff interact?

22 A. Oh, daily. Multiple times. You know,
23 we're -- we're together 12 to 14 hours a day typically.
24 Usually the -- the clubhouse and the athletic-training
25 staff are the first ones at the field and the last ones
01 to leave.

02 Q. So what kind of interactions do the athletic
03 trainers and the equipment-manager staff have together?

04 A. Well, they help me with all of my trunks, a
05 lot of my ordering; my shirts and pants and shoes that I
06 wear, they order for me typically. So it would be my
07 underwear. They do our laundry for us. And daily, if I
08 need something, they're there to assist me, and I'm there
09 to help them.

Total Number of Clips:1

Total Number of Segments:9

Total Running Time:00:26:14.820

10 Q. So you're aware that Lontex and Nike are in a
11 lawsuit over the phrasing "COOL COMPRESSION," correct?
12 A. I am.
13 Q. And I want to ask you some questions now, and
14 I want you to disregard any knowledge that you have
15 solely because -- or because you were aware of this
16 lawsuit or someone in this lawsuit showed you something.
17 I want to ask you questions just about your knowledge
18 from outside of this lawsuit. Is that fair?

5. Page 22:20 to 23:10 (Running 00:00:48.770)

20 Q. (By Mr. Wagner) Do you understand?
21 A. I do. Yeah.
22 Q. So from 2016 onward, outside this lawsuit,
23 have you ever seen Nike compression garments?
24 A. Yes.
25 Q. In what circumstances have you seen Nike
01 compression garments?
02 A. Well, right around 2016 Nike also got a
03 baseball contract to provide undergear for MLB. So
04 players would be wearing these garments inside or
05 underneath their uniforms, and I've seen Nike, you know,
06 throughout the game in advertising and in stores and
07 everywhere, basically.
08 Q. For this same time period of 2016 onward, have
09 you seen -- what particular advertising have you seen
10 that showed Nike compression garments?

Total Number of Clips:1
Total Number of Segments:9
Total Running Time:00:26:14.820

14 THE WITNESS: I definitely remember Nike,
15 their big -- their big talk was Dri-FIT, right? So it
16 was Dri-FIT Cool Compression. And that was the big shirt
17 that guys started to wear underneath their uniform. And
18 some of the players didn't like them that much, you know,
19 at that point in time. It -- there wasn't -- it wasn't
20 the same shirt that they've worn before. And that was
21 probably the first time I ever associated Cool
22 Compression and Nike together.
23 Q. (By Mr. Wagner) So you said associating Cool
24 Compression and Nike together. Where, outside of this
25 lawsuit, materials you've reviewed before this lawsuit,
01 have you seen Cool Compression in connection with Nike
02 compression garments?

7. Page 24:04 to 25:10 (Running 00:01:54.051)

04 THE WITNESS: Well, I definitely remember
05 seeing a -- a Dick's Sporting Goods ad. I remember going
06 to the store myself seeing Cool Compression, because even
07 my own son asked me about Nike Cool Compression shirts.
08 I've seen like little fliers, I believe, you know,
09 advertisement type of fliers.
10 Q. (By Mr. Wagner) So thinking back to the times
11 you've seen Cool Compression with Nike, where have you
12 seen it referred to Cool Compression?
13 A. Where have I seen Nike and Cool Compression?

Total Number of Clips:1
Total Number of Segments:9
Total Running Time:00:26:14.820

14 Well, one, I remember going to a store and
15 seeing the little poster of Nike Cool Compression. I
16 remember -- you know, there's pamphlets and little
17 brochures all the time in clubhouses. I definitely
18 remember a little pamphlet, seeing Nike Dri-FIT Cool
19 Compression shirts.

20 Q. And you mentioned Dick's. Have you seen any
21 Dick's advertising that referred to Cool Compression?

22 A. I have.

23 Q. What advertising is that?

24 A. That is the pamphlets and also the little --
25 what do you call it? -- the little stands, you know,
01 where they're selling the garments in the store.

02 Q. So have you ever referred to the Dick's online
03 store page?

04 A. Have I ever referred to it? Yes.

05 Q. Do you recall whether you saw compression
06 garments advertised on their store page?

07 A. No.

08 Q. So from 2016 onward, and of course outside
09 this lawsuit, did you ever believe that Nike and SWEAT IT
10 OUT had any of the same stretch technology?

8. Page 25:13 to 25:20 (Running 00:00:21.910)

13 THE WITNESS: Well, I associated COOL
14 COMPRESSION with -- with SWEAT IT OUT. I didn't know if,
15 you know, they had any type of deal, you know, between

Total Number of Clips:1
Total Number of Segments:9
Total Running Time:00:26:14.820

16 the two.

17 Q. (By Mr. Wagner) So when you say you

18 associated, did you have any belief in your mind as to

19 whether Nike's Cool Compression and SWEAT IT OUT's COOL

20 COMPRESSION were related in some way?

9. Page 25:23 to 26:08 (Running 00:00:36.410)

23 THE WITNESS: Well, again, the only way I had

24 known COOL COMPRESSION is through Lontex and SWEAT IT

25 OUT. So, you know, I -- I wasn't really even worried

01 about is there an association between the two.

02 Q. (By Mr. Wagner) Can you say that again? I'm

03 sorry. I want to make sure I heard it.

04 A. Well, when I saw COOL COMPRESSION, you know, I

05 only think of SWEAT IT OUT first. That's what I learned.

06 I didn't know if there was an association between Nike

07 and SWEAT IT OUT, you know, using the same terms.

08 MR. WAGNER: No more questions.

Total Number of Clips:1

Total Number of Segments:9

Total Running Time:00:26:14.820

Designation Run Report

DuggerCross

Dugger, Keith 07-20-2021

Cross Examination by Mr. Hynes 01:28:31

Total Time 01:28:31



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26:17 - 28:4

Dugger, Keith 07-20-2021 (00:01:33)

DuggerCross.1

26:17 Mr. Dugger. We haven't met before, have we?

26:18 A. No, we have not.

26:19 Q. My name is Michael Hynes. I am with DLA

26:20 Piper, and I'm the lawyer for Nike in the lawsuit that

26:21 you just talked about.

26:22 But you know Mr. Wagner, don't you?

26:23 A. I have met him.

26:24 Q. How many times have you met Mr. Wagner?

26:25 A. I've talked to him twice. This is the first

27:1 time I've ever seen him.

27:2 Q. Have you exchanged emails with him?

27:3 A. I have.

27:4 Q. Have you signed a declaration that he sent to

27:5 you?

27:6 A. I have.

27:7 Q. Have you looked at pictures that have Nike

27:8 products that he sent you?

27:9 A. I have.

27:10 Q. And are some of those pictures Dick's

27:11 advertisements?

27:12 A. I believe so.

27:13 Q. Are they pamphlets like the ones you just

27:14 referenced in your testimony?

27:15 A. Yes.

27:16 Q. And isn't it true that you met Mr. Wagner

27:17 because he is your friend Efraim's lawyer?

27:18 A. Well, first of all, Efraim is an associate of

27:19 mine. He is a business colleague. I wouldn't

27:20 necessarily call him my friend.

27:21 Q. Does he call you "Doogie"?

27:22 A. Yep. Everyone in baseball calls me "Doogie."

27:23 Q. Let me make sure I got your testimony --

27:24 testimony straight now.

27:25 Mr. Efraim is not your friend. He's a

28:1 spokesperson or an associate. Is that what you said?

28:2 A. He's a colleague. I would consider him a

28:3 friend, but he's not someone I'm calling every day or,

28:4 you know, once a week, even two weeks.

28:5 - 33:3

Dugger, Keith 07-20-2021 (00:05:52)

DuggerCross.2

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28:5 Q. Okay. Mr. Dugger, did you sign a declaration
28:6 that was sent to you in 2020 by Mr. Wagner?
28:7 A. I did.
28:8 Q. Did you make any changes to that declaration?
28:9 A. I don't understand the question exactly.
28:10 Changes on what he sent to me?
28:11 Q. I can break it down for you.
28:12 A. Yep.
28:13 Q. So he sent you a piece of paper, right, by
28:14 email?
28:15 A. Yep.
28:16 Q. And it said, "Keith Dugger declares as
28:17 follows," and then it has some numbered paragraphs
28:18 underneath it, right?
28:19 A. Did you freeze?
28:20 Q. No. Do you want me to repeat the question?
28:21 A. Yeah.
28:22 Q. Okay. So -- you know what, let's do it this
28:23 way. When did you first learn about this lawsuit?
28:24 A. I can't give you the exact date off the top of
28:25 my head. I do remember -- the actual lawsuit, I don't
29:1 know. It was in 2020 at some point in time.
29:2 Q. How did you come to learn of it?
29:3 A. I was contacted by Efraim asking, basically,
29:4 if I had any samples or any of his product, if I could
29:5 take some pictures of it. But I didn't know it was
29:6 necessarily a lawsuit at that point in time.
29:7 Q. Okay. And did you send him some pictures?
29:8 A. I sure did.
29:9 Q. Okay. Where did you get the garments that you
29:10 took --
29:11 A. They're in my stockpile from spring training,
29:12 some of my travel bags and some of it here.
29:13 Q. Did you take the pictures?
29:14 A. I took the pictures.
29:15 Q. Okay.
29:16 A. I also had my -- I had some garments here that
29:17 I had one of my clubhouse attendants go in and take
29:18 pictures and send to me.
29:19 Q. What's your clubhouse attendant's name?

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29:20 A. I have Alan Bossart, and I have Mike
29:21 Pontarelli, but I believe Alan Bossart might have taken
29:22 the picture [sic].
29:23 Q. Okay. When you say "stockpile," what do you
29:24 mean?
29:25 A. I have -- I have a supply of various garments.
30:1 Q. When you say "stockpile," are you referring to
30:2 just Lontex products?
30:3 A. You -- you name a company. I have a stockpile
30:4 of everything.
30:5 Q. Okay. How many garments are -- how many
30:6 Lontex garments are in your stockpile right now?
30:7 A. It varies, right? But it could be anywhere
30:8 from 10 to 30 different products.
30:9 Q. Is it your testimony that you've bought 30
30:10 products from Lontex this year?
30:11 A. My testimony is not -- I have not purchased
30:12 any this year.
30:13 Q. I thought what you -- you testified that on
30:14 average it was about four or five garments a year.
30:15 A. That is correct.
30:16 Q. So that means it would have taken about six
30:17 years to get a 30-garment stockpile, right?
30:18 A. Only on my purchase side. I've bought more at
30:19 periods of time. I've also had samples given to me. I
30:20 have had -- I've collected this over the years. I don't
30:21 throw these things away. They're expensive.
30:22 Q. Players --
30:23 A. And again, when -- when I say an "order" -- so
30:24 an order or a product, that can be six garments for one
30:25 individual.
31:1 Q. Is it your testimony that you've bought six
31:2 Lontex garments for an individual player?
31:3 A. Have I before --
31:4 Q. Yeah.
31:5 A. -- bought six garments?
31:6 Q. Yeah.
31:7 A. Yes, I have.
31:8 Q. Which player?
31:9 A. I can't recall.

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31:10 Q. When you say "six garments," are you talking
31:11 about six different garments or the same garments?
31:12 A. It could be both.
31:13 Q. Okay. Can you name any players that got
31:14 any -- any combination of any Lontex products six --
31:15 six -- six garments in a shot? Any player.
31:16 A. Yeah. Charlie Blackman.
31:17 Q. Charlie -- Charlie Blackman.
31:18 A. Yeah.
31:19 Q. What year did you purchase six Lontex
31:20 garments?
31:21 A. I can't tell the you specific year.
31:22 Q. What years did Charlie Blackman play for the
31:23 Colorado Rockies?
31:24 A. He still plays for the Colorado Rockies.
31:25 Q. And when did he start playing for the Colorado
32:1 Rockies?
32:2 A. So Charlie is probably on his -- this is a
32:3 guess -- probably 12 years now.
32:4 Q. 12 years.
32:5 So is it your testimony that you bought six
32:6 garments for Charlie Blackman in the same year or over
32:7 the 12-year period?
32:8 A. No. At periods of time I've bought Charlie
32:9 multiple garments for that single year.
32:10 Q. Multiple garments for that single year.
32:11 I'm sorry. I don't understand. I'll ask my
32:12 question again.
32:13 Is it your testimony or is it not your
32:14 testimony that you bought Charlie Blackman six Lontex
32:15 garments in the same year?
32:16 A. My testimony is I have in the past, yes.
32:17 Q. Six garments in the same year all for Charlie
32:18 Blackman.
32:19 A. Yes. And they not necessarily have to be the
32:20 same exact garment.
32:21 Q. Understood. Okay.
32:22 MR. HYNES: Now can we pull up a document for
32:23 Mr. --
32:24 Q. (By Mr. Hynes) I'm sorry. It's Mr. "Dugger"?

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33:8 - 47:22	<p>32:25 A. That's correct.</p> <p>33:1 Q. Okay.</p> <p>33:2 MR. GAFFNEY: -- for Mr. Dugger,</p> <p>33:3 LTX_EDPA_39890.</p> <p>Dugger, Keith 07-20-2021 (00:15:35)</p> <p>33:8 MR. HYNES: See if we can get it on the screen</p> <p>33:9 there in front of the -- can you go to the first page of</p> <p>33:10 this exhibit? Okay. Thank you. Okay.</p> <p>33:11 Q. (By Mr. Hynes) So that's your name up there</p> <p>33:12 on the top of this invoice, right?</p> <p>33:13 A. That is correct.</p> <p>33:14 Q. Okay. And it says, "Lontex Corp." there,</p> <p>33:15 right? Top left-hand corner.</p> <p>33:16 A. It does. Yes.</p> <p>33:17 Q. And then it says, "Cool Performance Wear."</p> <p>33:18 Do you see that?</p> <p>33:19 A. I do.</p> <p>33:20 Q. It also says, "sweatitout.com," right?</p> <p>33:21 A. That's correct.</p> <p>33:22 Q. And on the right-hand side it says, "Cool</p> <p>33:23 Power" with an R in the middle of a circle there.</p> <p>33:24 Do you see that?</p> <p>33:25 A. I do.</p> <p>34:1 Q. And then it says, "Cool Air" with a little</p> <p>34:2 TM next to it, right?</p> <p>34:3 A. Um-hum.</p> <p>34:4 Q. And then down a little bit it says, "Dry Fire</p> <p>34:5 Performance Wear." Do you see that?</p> <p>34:6 A. I do.</p> <p>34:7 Q. Okay. Now, do you associate "Cool Power" with</p> <p>34:8 Lontex, the phrase?</p> <p>34:9 A. I have seen it, but, honestly, I didn't</p> <p>34:10 remember until you just showed me this invoice right</p> <p>34:11 here.</p> <p>34:12 Q. What about "Cool Air"? Do you remember that</p> <p>34:13 being associated with Lontex?</p> <p>34:14 A. I don't.</p> <p>34:15 Q. Do you remember "Dry Fire" being associated</p> <p>34:16 with Lontex?</p> <p>34:17 A. I do not.</p>	<p>DX892.1</p> <p>DuggerCross.3</p> <p>DX892.1.1</p> <p>DX892.1.2</p> <p>DX892.1.3</p> <p>DX892.1.4</p> <p>DX892.1.5</p> <p>DX892.1.6</p> <p>DX892.1.7</p> <p>DX892.1.8</p>
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34:18 Q. What about "Cool Performance Wear"; do you

34:19 remember that being associated with Lontex?

34:20 A. I do.

34:21 Q. Okay. And "SWEAT IT OUT," do you remember

34:22 that being associated with Lontex?

34:23 A. Yes.

34:24 Q. All right. Do you see COOL COMPRESSION

34:25 anywhere on this invoice? Do you see COOL COMPRESSION

35:1 referenced anywhere on this invoice?

35:2 A. I do not.

35:3 Q. Okay. It says here that you ordered four

DX892.1.9

35:4 white extra large thigh support shorts, right?

35:5 A. Yes.

35:6 Q. Okay. And that was -- is that -- and then it

35:7 says "Todd Helton" written there, right?

DX892.1.10

35:8 A. Yeah.

35:9 Q. So did you buy four pairs of shorts for Todd

35:10 Helton in 2019 [sic]?

35:11 A. Looking at this, it looks like I did.

35:12 Q. Um-hum. I'm -- I'm not aware of any other

35:13 invoice from 2019.

35:14 Does it refresh your recollection that you

35:15 bought four pairs of shorts from Lontex in 2009?

35:16 A. I'm sure I did.

35:17 Q. Did you buy any other products from Lontex in

35:18 2009?

35:19 A. Yep, I did.

35:20 Q. Okay. I don't have any invoices either from

35:21 the Rockies or from Lontex reflecting those sales.

35:22 Can you tell me what they are?

35:23 A. Well, I -- I had -- at that point in time I

35:24 had Troy Tulowitzki, and usually I was ordering or

35:25 getting at least a couple pair of shorts for him too. It

36:1 might not be under his name.

36:2 Q. Sorry. I didn't mean to interrupt you. Did

36:3 you finish your answer?

36:4 A. I did.

36:5 Q. Okay. Are you -- is it your testimony that

36:6 you bought -- that you're positive that you bought Lontex

36:7 garments for Troy Tulowitzki in 2009?

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36:8 A. I'm not positive, but I know I supplied them.
36:9 Q. It could have been another year, right?
36:10 A. Well, he had surgery that year, so it was that
36:11 year for sure.
36:12 Q. So it is your testimony that you positively
36:13 bought Troy --
36:14 A. Positively I gave Troy Tulowitzki shorts. I
36:15 don't know if I ordered them specifically that year. It
36:16 could have been from one of my stockpiles.
36:17 Q. Now, it could have been from one of your
36:18 stockpiles?
36:19 A. Yeah.
36:20 Q. What -- what was the size of your stockpile of
36:21 Lontex garments in 2009?
36:22 A. Probably about the same as it is now.
36:23 Q. Which is what?
36:24 A. You know, four to six garments of every size,
36:25 maybe a little under that. Kind of varies.
37:1 Q. Four to six garments of every size. What are
37:2 the sizes?
37:3 A. Large and XL.
37:4 Q. Four to six. So that means eight to 12?
37:5 A. No. I've never had 12 -- 12 on [sic] stock.
37:6 Meaning, I've had probably a set of four
37:7 shorts, four shirts, sometimes tights, sometimes socks.
37:8 Q. Sometimes tights, sometimes socks.
37:9 How many? I -- I'm just confused. I don't
37:10 know what the size of your stockpile of Lontex is. I
37:11 haven't seen it.
37:12 A. Well, I don't know exactly either. I'm
37:13 telling you that normally I have about four of each size
37:14 garment.
37:15 Q. And there are two sizes? Is that what you
37:16 said?
37:17 A. Large and XL. And I have multiple places that
37:18 I keep my product.
37:19 Q. So four of each is eight, right? Or am I
37:20 missing something?
37:21 A. You're counting the wrong way.
37:22 Q. Okay.

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37:23 A. Four large, four XL.

37:24 Q. Four large and four XL.

37:25 A. Yes.

38:1 Q. So that's a total of eight.

38:2 A. Total garments, yes.

38:3 Q. That's the stockpile.

38:4 A. That's what I'm calling the "stockpile."

38:5 MR. HYNES: Okay. Let's go to the next

DX892.2

38:6 invoice -- well, just the next page.

38:7 Q. (By Mr. Hynes) All right. The next invoice

DX892.2.1

38:8 is 2010. Do you see that?

DX892.2.2

38:9 A. I do.

38:10 Q. Okay. And it seems like you bought seven

DX892.2.3

38:11 garments in 2010, right?

38:12 A. It looks like at that period of time, yes.

38:13 Q. Okay. On this invoice do you see SWEAT IT OUT

DX892.2.4

38:14 on the right?

38:15 A. I do.

38:16 Q. Do you see Lontex Corp.?

DX892.2.5

38:17 A. I do.

38:18 Q. Do you see Cool Power?

DX892.2.6

38:19 A. Yes, sir.

38:20 Q. Do you see Cool Air?

DX892.2.7

38:21 A. Correct.

38:22 Q. Do you see Dry Fire?

DX892.2.8

38:23 A. I do.

38:24 Q. But you don't see COOL COMPRESSION, do you?

38:25 A. I do not.

39:1 Q. Okay. So is it -- is it fair to say that

39:2 in 2010 you bought -- you bought seven garments from

39:3 Lontex for the 200 players you testified you're

39:4 responsible for?

39:5 A. I'm not -- I'm saying I did purchase that

39:6 right there, yeah.

39:7 Q. Any others from Lontex?

39:8 A. In 2010?

39:9 Q. Yes.

39:10 A. I can't tell you. But I know who those are

39:11 for right there.

39:12 Q. You do?

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39:13 A. Yeah.

39:14 Q. Who are they for?

39:15 A. Troy Tulowitzki, Todd Helton.

39:16 Q. And how do you know?

39:17 A. Because they had specific injuries:

39:18 thigh, groin, hip.

39:19 MR. HYNES: Okay. Can we go to the next

DX892.3

39:20 invoice, please, Val?

39:21 Q. (By Mr. Hynes) Okay. So we -- this is

DX892.3.1

39:22 from 6/21/2012. Do you see that date?

DX892.3.2

39:23 A. I do.

39:24 Q. Okay. And again, we see SWEAT IT OUT on the

DX892.3.3

39:25 right-hand side. Do you see that?

40:1 A. I do.

40:2 Q. And you see Cool Performance Wear again,

DX892.3.4

40:3 right?

40:4 A. That's correct.

40:5 Q. And you see Cool Power, right?

DX892.3.5

40:6 A. Yes.

40:7 Q. And Cool Air again, correct?

DX892.3.6

40:8 A. That's correct.

40:9 Q. And again, we don't see COOL COMPRESSION, do

40:10 we?

40:11 A. I do not.

40:12 Q. Okay. And then you have "Troy" written in the

DX892.3.7

40:13 bottom there. That's Troy -- Troy Tulowitzki, right?

40:14 A. That's Troy Tulowitzki, Jorgi de la Rosa,

DX892.3.8

40:15 Jhoulys Chacin. I couldn't tell you who the other guy

40:16 is.

40:17 Q. Josh -- Josh Outman? Does that sound

40:18 familiar?

40:19 A. Um-hum.

40:20 Q. Okay. So Troy had a groin injury and was out

40:21 starting in [sic] about May 30th, 2012; is that right?

40:22 A. Troy had an injury every year.

40:23 Q. And Jorgi de la Rosa had elbow problems in

40:24 May, didn't he, of 2012?

40:25 A. That's about the right time he hurt himself,

41:1 yeah.

41:2 Q. And Josh Outman was actually on the DL because

41:3 of arm problems in 2012, right?

41:4 A. No. Josh Outman was actually on the DL

41:5 because he puked and tore his oblique.

41:6 Q. Okay. Injured though, correct?

41:7 A. That's correct.

41:8 Q. Okay. And Mr. Chasin, pectoral muscle injury?

41:9 A. That is correct.

41:10 Q. Okay. So these gentlemen had injuries. Is

41:11 that why you ordered them the Lontex products?

41:12 A. At this point in time, yes, correct.

41:13 Q. Isn't it true that the overwhelming majority

41:14 of instances where you purchased Lontex products were for

41:15 specific players that had suffered specific injuries?

41:16 A. Not all the time, no.

41:17 Q. That's not what I said.

41:18 A. You just asked me is this specific -- did I

41:19 order specific garments a majority of the time for these

41:20 individuals.

41:21 Q. For the -- that's right. For the majority of

41:22 purchases you make from -- the majority of purchases

41:23 you've made from Lontex over the years were for specific

41:24 players that suffered specific injuries, correct?

41:25 A. At times. Not all the time.

42:1 Q. That's what I said. I said the "majority of

42:2 times." Would you agree with me that it's the majority?

42:3 A. No. I won't say that because it's not

42:4 necessarily the majority. I'll say at periods of time I

42:5 am ordering for specific injuries.

42:6 Q. All right. So let's look at this invoice.

42:7 You have four players listed. They're all injured,

42:8 right?

42:9 A. Yeah.

42:10 Q. And you have six total garments, correct?

42:11 A. That's correct.

42:12 Q. And sometimes you order multiple garments for

42:13 the same player, right?

42:14 A. That's correct.

42:15 Q. And here, in fact, you have quantities of two

42:16 for two of those products, right?

42:17 A. That's correct.

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42:18 Q. Do you recall whether or not all of these
 42:19 garments were for all these four injured players in 2012?
 42:20 A. Not a hundred percent. I -- I guarantee I
 42:21 gave them all at least one of those garments.
 42:22 Q. And four out of six is a majority, right?
 42:23 A. Yes, it is.
 42:24 MR. HYNES: Okay. Let's go to the next
 42:25 invoice.
 43:1 Q. (By Mr. Hynes) That's your name, again, on
 43:2 the top, 2013, right?
 43:3 A. That is correct.
 43:4 Q. Okay. SWEAT IT OUT, again, to the right --
 43:5 A. Yes.
 43:6 Q. -- correct?
 43:7 Cool Performance Wear, we see that again,
 43:8 right?
 43:9 A. I do.
 43:10 Q. Cool Power, you see that again, right?
 43:11 A. Yes.
 43:12 Q. Cool Air, you see that again, right?
 43:13 A. Correct.
 43:14 Q. Do see COOL COMPRESSION anywhere?
 43:15 A. I do not.
 43:16 Q. But it's still your testimony that it's COOL
 43:17 COMPRESSION that you associated with SWEAT IT OUT
 43:18 in 2013?
 43:19 A. From the very time I've ever met Efraim, he's
 43:20 used COOL COMPRESSION in his -- his --
 43:21 Q. That's not what you -- that's not what your
 43:22 lawyer asked you. Okay?
 43:23 A. He asked me if I associated the name with
 43:24 SWEAT IT OUT, and I do.
 43:25 Q. Do you associate Cool Performance Wear with
 44:1 SWEAT IT OUT?
 44:2 A. At times, yes.
 44:3 Q. What times?
 44:4 A. I'm looking at an invoice right here. But not
 44:5 when Efraim is giving his talks to us and talking about
 44:6 the product.
 44:7 Q. So you associate COOL COMPRESSION when he's

DX892.4

DX892.4.1

DX892.4.2

DX892.4.3

DX892.4.4

DX892.4.5

DX892.4.6

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44:8 talking but not on the invoices. Is that your testimony?

44:9 A. I associate -- no. I -- I see COOL

44:10 COMPRESSION on various garments I have too.

44:11 Q. Do you associate Cool Performance Wear with

44:12 SWEAT IT OUT?

44:13 A. I do.

44:14 Q. Do you associate Cool Power with SWEAT IT OUT?

44:15 A. I recall the name, but, no, not part of his

44:16 talk. I don't remember Cool Power being on any of the

44:17 labels.

44:18 Q. I'm just asking you -- I'm staring at these

44:19 invoices just like you are. They all say "Cool Power."

44:20 I'm asking you if you associate Cool Power with SWEAT IT

44:21 OUT? It's a yes or no.

44:22 A. I didn't prior to this, no.

44:23 Q. Okay. What about Cool Air? Do you associate

44:24 Cool Air with SWEAT IT OUT?

44:25 A. No.

45:1 Q. Do you associate Dry Fire with SWEAT IT OUT?

45:2 A. I do not.

45:3 Q. Okay. Only COOL COMPRESSION.

45:4 A. That's correct.

45:5 Q. Okay.

45:6 A. And COOLMAX.

45:7 Q. And COOLMAX.

45:8 A. Yes.

45:9 MR. HYNES: Let's go to the next invoice

DX892.5

45:10 please, Val.

45:11 Q. (By Mr. Hynes) Okay. This invoice is

DX892.5.1

45:12 dated 2015. It says you bought two garments for your 200

DX892.5.2

45:13 players in 2015 from Lontex.

45:14 A. Well, first of all -- can I go back? -- my

45:15 players are 25 players. Okay? 200 is what I -- I

45:16 oversee. So when you're saying my players, my direct

45:17 players is 25 players at the Major League level.

45:18 Q. Okay. Because in -- in your testimony when

45:19 your lawyer was --

45:20 A. My testimony is I oversee 200 players.

45:21 Q. Well, you said 40 and 200 in your direct

45:22 testimony.

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45:23 A. No. A 40-man roster is -- we have
 45:24 availability to collect -- to take 25 from the 40-man
 45:25 roster for a Major League team. And then if you count
 46:1 the Dominican Republic as part of our network, we're
 46:2 somewhere between 175 and 200 players.
 46:3 Q. I'm just confused.
 46:4 A. I don't -- well, the problem you're confused
 46:5 is, I don't purchase for minor leagues. I purchase
 46:6 solely for the Major League level.
 46:7 Q. Okay. So you oversee them, but you don't
 46:8 purchase for them.
 46:9 A. That is correct.
 46:10 Q. Okay. And you said 40 players before because
 46:11 that's the roster, but you don't purchase for 40 players;
 46:12 you only purchase for -- what? -- 25?
 46:13 A. So do you understand what a 40-man roster is?
 46:14 Q. Sounds to me like there's 40 names on a
 46:15 roster.
 46:16 A. Yeah. So in the major leagues you have to
 46:17 draw from your team daily. You have 40 players you can
 46:18 draw from. 25 can only be with you during the season.
 46:19 The other 15 can be in the minor leagues, and that's
 46:20 where they are; they're typically in A ball, in double A
 46:21 and triple A.
 46:22 Q. Okay. So your testimony before where you said
 46:23 you oversaw 40 -- 200 players and there were 40 Major
 46:24 League Baseball players, that wasn't right. What you
 46:25 really meant was there was 25 players that you were --
 47:1 A. No. My testimony was spot-on. It's your
 47:2 interpretation of what a Major League roster is.
 47:3 Q. Okay.
 47:4 A. Major League roster is 25 players.
 47:5 Q. How many players do you purchase garments for?
 47:6 A. For me?
 47:7 Q. Yeah.
 47:8 A. I'll purchase the garments for the -- whoever
 47:9 is on my roster here or who is injured, and that can
 47:10 vary. I could put someone on a 60-day DL, and
 47:11 that 40-man roster can even go up to 50 to 60 if they're
 47:12 on a 60-day DL.

clear

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47:13 Q. So is it 25, 40, 50, 60, or 200 that you --
 47:14 A. This sounds like a collective-bargaining
 47:15 agreement instead of exactly what our roster is. I mean,
 47:16 the argument is -- or what we're talking about is SWEAT
 47:17 IT OUT and Lontex and COOL COMPRESSION, not our Major
 47:18 League roster.

47:19 Q. No. What we're talking about is how many
 47:20 players you purchase garments for. And you
 47:21 testified 20 -- you -- that there are 40 players.

47:22 A. I said I oversee --

48:2 - 53:1

Dugger, Keith 07-20-2021 (00:05:43)

DuggerCross.4

48:2 Q. (By Mr. Hynes) I'm going to ask you one more
 48:3 time, and you can answer it or not.
 48:4 How many players do you purchase garments for?
 48:5 A. It varies year to year, but typically my Major
 48:6 League roster, 25 players. I'm responsible to oversee
 48:7 all -- all of our players throughout our minor leagues,
 48:8 but I'll order anywhere from -- whoever is hurt that --
 48:9 that needs the garment. I can order for a guy that's on
 48:10 the 40-man roster that's playing in double A if I believe
 48:11 he needs a garment.

48:12 Q. And that's because the primary purpose for
 48:13 your decision to purchase Lontex garments is because the
 48:14 player is hurt, right?

48:15 A. Or preventive.

48:16 Q. Well, here we are -- look at this one. 2015,
 48:17 this invoice, you purchased two garments.
 48:18 Did you only want to prevent injury to two
 48:19 players?

DX892.5.2

48:20 A. Maybe that's all I needed at that period of
 48:21 time.

48:22 MR. HYNES: Let's go to the next invoice.

48:23 First of all, can we go back, please -- go back to that
 48:24 invoice.

48:25 THE WITNESS: Okay. That is an invoice not to
 49:1 me. So this is exactly what I'm talking about. It's
 49:2 attention John Duff (phonetic). This is a Minor League
 49:3 purchase. So this has nothing to do with me.

49:4 Q. (By Mr. Hynes) Okay. If says "2015," right?

49:5 A. That's correct.

DuggerCross

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ID

49:6 Q. It's the only invoice I have.

49:7 Is it fair to say you didn't purchase any

49:8 garments for your players in 2015?

49:9 A. I can't recall.

clear

49:10 Q. I don't have an invoice for 2016.

49:11 Is it fair to say you didn't purchase any

49:12 Lontex garments in 2016?

49:13 A. No, not necessarily.

49:14 Q. Do you know? Which garments?

49:15 A. I just said I don't know. Can't recall.

49:16 Q. Wouldn't there -- wouldn't there be an

49:17 invoice?

49:18 A. Not necessarily.

49:19 Q. Sometimes you purchase garments without an

49:20 invoice?

49:21 A. That is correct.

49:22 Q. How does that work?

49:23 A. Efraim can deliver them -- hand-deliver them

49:24 right to us when we're in Philadelphia. He can email

49:25 [sic] them. He can FedEx.

50:1 Q. How does he get paid?

50:2 A. Sometimes we -- we've paid him various ways.

50:3 I mean, it could -- could be an invoice. I don't know.

50:4 I can't recall every time that I've had to give him money

50:5 for a garment.

50:6 Q. Is it -- sorry. Go ahead.

50:7 A. Sometimes he'll even provided samples for us

50:8 too -- a lot of times for us.

50:9 Q. Do the Colorado Rockies pay vendors without

50:10 invoices, in your experience?

50:11 A. No, not typically.

50:12 MR. HYNES: Go to the next one.

DX892.6

50:13 Q. (By Mr. Hynes) It's 2017. Six

DX892.6.1

50:14 garments, 2017. Does that sound right?

DX892.6.2

50:15 A. That's correct.

50:16 MR. HYNES: Okay. Go to the next invoice.

clear

50:17 THE WITNESS: Can we go back to the invoice?

50:18 Q. (By Mr. Hynes) No. 2018.

50:19 A. It says "COOL COMPRESSION" on there too.

50:20 Q. That's important to you, isn't it?

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50:21 A. Well, that's what we're talking about right

50:22 here.

50:23 Q. Why is it so important to you?

50:24 A. It's not that important to me. It's -- it's

50:25 exactly what you asked me prior, was do I associate COOL

51:1 COMPRESSION with SWEAT IT OUT, and I do.

51:2 Q. It sounds like it's important to you, and I'm

51:3 just wondering why.

51:4 A. Cool --

51:5 Q. Did Mr. Wagner tell you it should be important

51:6 to you?

51:7 A. No. Mr. Wagner didn't tell me it's important

51:8 to me.

51:9 Q. Okay. So this is 2018, this invoice. Six,

DX892.7.2

51:10 seven, eight, nine garments in 2018. Does that sound

DX892.7.3

51:11 right?

51:12 A. Looks right, yeah.

51:13 Q. Would you purchase nine garments if you had a

51:14 stockpile?

51:15 A. Possibly.

51:16 Q. Your budget, you said, is limited for

51:17 garments, right?

51:18 A. Yeah. I mean, I don't have a huge number I

51:19 can go purchase garments.

51:20 Q. So why would you buy nine Lontex garments if

51:21 you had a stockpile full of Lontex garments?

51:22 A. Maybe I had to up my restock or restock my

51:23 stockpile.

51:24 Q. You don't know one way or the other, do you?

51:25 A. I know what I need when I order it.

52:1 Q. Well, that's my point, kind of.

52:2 Why would you order nine garments if you had a

52:3 stockpile?

52:4 A. Well, if you look, one of them -- two of them

52:5 are socks. I don't typically order socks that much. So

52:6 if you took away the socks, then you go right back to

52:7 what I've been saying.

52:8 Q. Seven?

52:9 A. Yeah. Roughly around six garments a year.

52:10 Q. Would you keep purchasing six garments a year

DuggerCross

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52:11 even if you had a stockpile?

52:12 A. Not necessarily, no.

52:13 Q. Because that wouldn't make sense given your

52:14 limited budget for garments, right?

52:15 A. I think my limited budget has nothing to do

52:16 with this.

52:17 Q. Are you going to answer my question or . . .

52:18 A. I'm answering your question. My limited

52:19 budget has nothing to do with what I purchase. If I need

52:20 something, I can get approval to order it.

52:21 Q. Well, if you had a limited budget, why would

52:22 you buy a whole bunch of garments if you already had a

52:23 stockpile of garments?

52:24 A. I wouldn't.

52:25 Q. That's what I thought.

53:1 Okay. Let's go back to your declaration.

53:5 - 56:7

Dugger, Keith 07-20-2021 (00:04:23)

DuggerCross.5

53:5 Q. (By Mr. Hynes) Do you have an office line?

53:6 A. Do I have an office line?

53:7 Q. Yeah. Like a professional telephone number

53:8 people can call you for business --

53:9 A. Yeah. I have multiple lines.

53:10 Q. Okay. Does Mr. Nathan call you from time to

53:11 time?

53:12 A. Yes, he has.

53:13 Q. And what numbers does he use? I don't need

53:14 the actual digits. Just like is it -- which numbers does

53:15 he call to reach you?

53:16 A. Good question. He could call the main line,

53:17 which they transfer numbers to me. He could call my

53:18 extension. Like in spring training, I have a different

53:19 extension.

53:20 Q. Do you -- sorry. Keep going.

53:21 A. Yeah. All my -- all my phones come to one

53:22 email -- excuse me -- one place. So my -- my phone

53:23 number in Arizona comes to this phone here in Colorado.

53:24 Q. Do you have Mr. Nathan's contact information

53:25 saved in your cell phone?

54:1 A. I do have a number for him. Yes.

54:2 Q. All right.

DuggerCross

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54:3 MR. HYNES: That's not the right document.

54:4 It's Rockies 259. She's scrolling. Okay.

DX891.1

54:5 Q. (By Mr. Hynes) Do you recall receiving a

DX891.1.1

54:6 voice -- a voice mail message from Mr. Nathan on

DX891.1.2

54:7 February 12th, 2020 at 11:52 a.m.?

54:8 A. On my cell phone?

54:9 Q. 619 -- 610-909-4802, Mailbox 2010.

DX891.1.3

54:10 A. So I -- I couldn't tell you exactly.

54:11 MR. WAGNER: Can you say that number again?

54:12 I'm sorry, Michael.

54:13 MS. FADIS: Do you know what the date of that

54:14 document is? Rockies 259.

54:15 MR. HYNES: Rockies 259 is the document.

54:16 The number that you asked for is 610-909-4802

54:17 for Mailbox 2010.

54:18 THE WITNESS: I don't know what that 610 is,

54:19 to be honest. My extension is 2010.

54:20 Q. (By Mr. Hynes) Okay. The -- Val will pull up

54:21 the email in a minute, but it says from S-T-A-D-M-I-N at

DX891.1.4

54:22 coloradorockies.com to D-U-G-G-E-R-K at

54:23 coloradorockies.com, and it says, "You have received a

54:24 voice mail message."

DX891.1.5

54:25 A. Yeah. So that probably went to our main line

55:1 that was transferred to me on a voice mail.

55:2 Q. Do you get emails like that when someone

55:3 leaves a voice mail for you?

55:4 A. I do, yes.

55:5 Q. Okay. Does that refresh your recollection as

55:6 to whether you received a telephone call on

55:7 February 12th, 2020 from Mr. Nathan?

55:8 A. It does not.

55:9 Q. Okay. Do you recall speaking to him in or

55:10 around February, 2020?

55:11 A. Yeah. Roughly towards the end of the month

55:12 there somewhere. I don't know the exact date, but yeah.

55:13 Q. What did you guys talk about?

55:14 A. Actually, he asked if I had any garments left

55:15 in my stockpile and if I could take pictures of the

55:16 labels.

55:17 Q. Okay. And did you do that?

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55:18 A. I believe I did, yes.

55:19 Q. Do you recall how many garments were left in
55:20 your stockpile at that time?

55:21 A. The exact number of garments I have? No, I
55:22 cannot recall.

55:23 Q. Yeah. At that time, when he asked you to go
55:24 take photographs of garments in your stockpile, do you
55:25 remember how many garments were in your stockpile?

56:1 A. No. Not exactly the amount, no.

56:2 Q. Okay. And then you sent him a text message
56:3 with some photographs of garments, right?

56:4 A. That's correct.

56:5 Q. Okay.

56:6 MR. HYNES: Val, can you pull up

56:7 LTX_EDPA_39880?

DX890.1

56:8 - 58:18

Dugger, Keith 07-20-2021 (00:02:37)

DuggerCross.6

56:8 Q. (By Mr. Hynes) And I'm sorry for the delay.

56:9 I tried to send you some of these documents, but UPS let
56:10 us down, but I'm trying to do the best I can here with
56:11 your time.

56:12 A. No problem.

56:13 Q. All right. I know this is a crummy copy, but
56:14 do you see --

DX890.1.1

56:15 MR. HYNES: Scroll up.

56:16 Q. (By Mr. Hynes) Do you see where it says "KD"?

DX890.1.2

56:17 A. Year.

56:18 Q. And then it says "Keith"?

56:19 A. Yeah.

56:20 Q. And there is a picture of a garment there, and
56:21 it says, "Here you go my friend."

DX890.1.3

56:22 A. Yeah.

56:23 Q. Do you remember writing, "Here you go my
56:24 friend" to Mr. Nathan?

56:25 A. Yeah.

57:1 Q. Do you want to modify the testimony when you
57:2 said you didn't think he was your friend, that he was a
57:3 colleague and an associate?

57:4 A. No. A close friend would be someone I

57:5 associate with weekly and daily. He's an acquaintance.

57:6 Q. He's an acquaintance?

DuggerCross

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ID

57:7 A. Yes.

57:8 Q. So it wasn't accurate when you wrote "here you
57:9 go my friend"?

57:10 A. That's what I wrote right there.

57:11 Q. Did you --

57:12 A. Have you ever called anyone a friend before
57:13 that's not truly your friend?

57:14 MR. HYNES: Can you scroll down?

DX890.1.4

57:15 Q. (By Mr. Hynes) It says, "Hi Keith. Great

57:16 picture of the" -- "of the outside shirt. We need the

57:17 label inside. It's right at the bottom of the shirt

57:18 inside the seam. The label is about 11 1/2 [sic] inches

57:19 by 2 inches. Must say on label COOL COMPRESSION" --

57:20 circle with an R in the middle. "I will send you an

57:21 example photo. Thank you."

57:22 Do you see that?

57:23 A. I do, yes.

57:24 Q. Do you recall this text exchange?

57:25 A. I do.

58:1 Q. Okay. What did you do after you received the
58:2 example photo that he sent?

58:3 A. I went and looked at some of my samples that I
58:4 had, or my stockpile, to see if I had any of those
58:5 labels.

58:6 Q. But you don't remember how many garments were
58:7 in that stockpile, do you?

58:8 A. I do not.

58:9 Q. Where was the stockpile?

58:10 A. I have -- I told you I have multiple. I have

58:11 some in my trunks. I have some at spring training. I

58:12 have some here.

58:13 Q. How old are the garments in your stockpiles?

58:14 A. I can't tell you exactly how old the garments
58:15 are.

58:16 Q. Okay.

58:17 MR. HYNES: Val, can you pull up 36382, which
58:18 is the LTX_EDPA?

DX894.1

58:19 - 62:11

Dugger, Keith 07-20-2021 (00:03:19)

DuggerCross.7

58:19 Q. (By Mr. Hynes) All right. So this is an

DX894.1.1

58:20 e-mail from you to sales@sweatitout.com dated March 30th,

DX894.1.2

DuggerCross

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58:21 2020, 3:48 p.m., right?

58:22 A. That is correct.

58:23 Q. And you sent this from your business email

58:24 address?

58:25 A. Yes.

59:1 Q. Okay. And you signed it "Doogie," right?

DX894.1.3

59:2 A. I did.

59:3 Q. But he's not your friend, right?

59:4 A. Every single person in baseball calls me

59:5 "Doogie."

59:6 Q. Okay.

59:7 A. There is not a person in this business that

59:8 doesn't know me by "Doogie."

DX894.2

59:9 MR. HYNES: Let's go to the next page. Behind

DX894.2.1

59:10 it. Let's go to the top, please.

DX894.2.2

59:11 Q. (By Mr. Hynes) That says "AB, Alan"?

59:12 A. Yeah.

59:13 Q. Who is that?

59:14 A. That's Alan Bossart. He's the clubhouse --

59:15 visiting clubhouse attendant.

59:16 Q. Okay. So --

59:17 A. During spring training, he is kind of the one

59:18 that runs this clubhouse here.

59:19 Q. So you didn't take this picture, right?

59:20 A. I did not. I had him take it and send from my

59:21 stockpile that's here.

DX894.2.3

59:22 Q. All right. So you see the -- the top photos

59:23 of the front of the shirt -- of a shirt, right?

59:24 A. I do.

DX894.2.4

59:25 MR. HYNES: And then let's scroll down a

60:1 little, Val.

60:2 Q. (By Mr. Hynes) And then you see this label,

60:3 right?

60:4 A. I do.

60:5 Q. So you -- you can't testify under oath for

60:6 certain that this label appeared in that shirt because

60:7 you didn't take the picture, right?

60:8 A. I did not take the picture.

60:9 Q. Yeah. So you don't know if that label appears

60:10 in that shirt or not, do you?

DuggerCross

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60:11 A. I can probably go in my stockpile right now

60:12 and show you that label.

60:13 Q. So is it your testimony that I can come

60:14 inspect your stockpile?

60:15 A. No.

60:16 Q. Yeah.

60:17 MR. HYNES: All right. Next page, please.

DX894.3

60:18 Q. (By Mr. Hynes) It's another shirt, right,

60:19 outside of a shirt, correct?

60:20 A. Yep.

60:21 Q. You didn't take that photograph, did you?

60:22 A. I don't know. I mean, I can't say on --

60:23 Q. Well, do you --

60:24 MR. HYNES: If you could scroll back up to the

60:25 top of this.

61:1 Q. (By Mr. Hynes) It says, "AB Alan," right?

61:2 A. Yeah.

61:3 Q. Okay. So doesn't this suggest to you that

61:4 Alan took the photographs?

61:5 A. That is correct.

61:6 MR. HYNES: All right. Let's go back down to

DX894.4

61:7 the next page.

61:8 Q. (By Mr. Hynes) All right. So you didn't take

61:9 this picture, right, either of these two pictures?

61:10 A. If this is associated with that same email,

61:11 then I did not take those pictures.

61:12 Q. So you can't testify under oath, either, that

61:13 you know that that tag appears in that shirt, can you?

61:14 A. Only based on the picture that Alan took.

61:15 Q. But you don't know because you didn't take the

61:16 pictures, right?

61:17 A. I did not take the picture.

61:18 MR. HYNES: Okay. Let's scroll down.

DX894.5

61:19 Q. (By Mr. Hynes) There is another shirt here,

61:20 right?

61:21 A. That's correct.

61:22 Q. Alan took that picture, too, right?

61:23 A. If it's associated with the same email.

61:24 MR. HYNES: Okay. Keep going down.

DX894.6

61:25 Q. (By Mr. Hynes) And then there's another

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62:1 shirt. Alan took that one, too, right?

62:2 A. Again, if it's associated with the same email.

62:3 MR. HYNES: Let's keep going down.

DX894.7

62:4 Q. (By Mr. Hynes) All right. So then there's

62:5 this brochure, right?

62:6 A. Yeah.

62:7 Q. Why did you send a brochure to Mr. Nathan?

62:8 A. Why?

62:9 Q. Yes.

62:10 A. I don't know.

62:11 Q. Okay. On the brochure --

DX894.7.1

62:16 - 63:5

Dugger, Keith 07-20-2021 (00:00:32)

DuggerCross.24

62:16 Q. (By Mr. Hynes) But in the meanwhile, you see

62:17 it says "True Compression" at the top?

DX894.7.2

62:18 A. I do.

62:19 Q. Okay. And then it says "SWEAT IT OUT" on the

DX894.7.3

62:20 first line. Do you see that?

62:21 A. Correct.

62:22 Q. Use [sic] the word capital C "Compression" at

DX894.7.4

62:23 the end there? At the end of that first line --

62:24 A. That is correct.

62:25 Q. There is no -- there's no cool in front of it,

63:1 right?

63:2 A. I don't see any cool.

63:3 Q. Actually, there's not COOL COMPRESSION

63:4 anywhere in this brochure that you sent Mr. Nathan,

63:5 right?

63:7 - 63:18

Dugger, Keith 07-20-2021 (00:00:33)

DuggerCross.8

63:7 THE WITNESS: Again, did I send him this or

63:8 did Alan Bossart?

63:9 Q. (By Mr. Hynes) You sent -- you sent it to

63:10 him. You sent him what you sent him, and it has AB at

63:11 the top. And as we just established, the photographs

63:12 were taken by -- by Alan, and then you sent those images

63:13 to Nathan, right -- Mr. Nathan?

63:14 A. I forwarded it to Nathan, yes.

63:15 Q. All right. And you don't see COOL COMPRESSION

63:16 anywhere in this document?

63:17 A. I do not, no.

63:18 Q. All right.

clear

DuggerCross

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64:6 - 69:22

Dugger, Keith 07-20-2021 (00:06:43)

DuggerCross.9

64:6 Q. (By Mr. Hynes) Okay. Mr. Dugger, so we just
 64:7 established, did we not, that in March of 2020 or late
 64:8 February/early March 2020 you had communications with
 64:9 Mr. Nathan, during which he asked you to send him some
 64:10 photos of the garments in your stockpile, right?

64:11 A. That's correct.

64:12 Q. Okay. And I'm showing you this document,
 64:13 Rockies 374, and that's an email from Mr. Wagner, right?

64:14 A. Yeah.

64:15 Q. Okay. And it said -- it says, "Hi Keith.

64:16 Efraim and I want to thank you so much for having that
 64:17 call with me a couple weeks ago just before all the
 64:18 craziness of COVID began."

64:19 Do you see that?

64:20 A. I do.

64:21 Q. Okay. So is it fair to say that you first met
 64:22 Mr. Wagner in February of 2020 or was it earlier?

64:23 A. No. I actually believe it was in March.

64:24 Q. Okay. This says "a couple of weeks ago."

64:25 It's dated April 4th. So you think it's early March or
 65:1 mid-March, 2020?

65:2 A. I do. I believe it's probably mid-March
 65:3 sometime.

65:4 Q. Okay. And the cc says

65:5 Craig.Crocket@troutman.com. Do you know who that is?

65:6 A. I do not.

65:7 Q. Okay. Then the second sentence says, "We put
 65:8 together a written statement that I believe is consistent
 65:9 with what you talked about with me."

65:10 Do you see that?

65:11 A. I do.

65:12 Q. So okay. So did you have a conversation with
 65:13 Mr. Wagner prior to April 4th --

65:14 A. Yes.

65:15 Q. -- April -- sorry -- April 4th, 2020?

65:16 A. Yes.

65:17 Q. How many conversations?

65:18 A. Not many, if -- if -- if more than one.

65:19 Q. Do you remember?

DX893.1

DX893.1.1

DX893.1.2

DX893.1.3

DX893.1.4

DX893.1.5

DuggerCross

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65:20 A. I do not.

65:21 Q. You don't remember whether it was one or more
65:22 than one?

65:23 A. That is correct.

65:24 Q. Okay. Do you know how long -- the amount of
65:25 time -- you spent speaking with Mr. Wagner prior to
66:1 April 4th, 2020?

66:2 A. Well, I know one thing. If you get 20 minutes
66:3 out of me during that time of the year, you're lucky. So
66:4 it wasn't very long.

66:5 Q. Okay. So it wasn't a very long conversation?

66:6 A. That's correct.

66:7 Q. Okay. And then he says, "Assuming it is,
66:8 would you please sign and send us back the signature
66:9 page. If you have questions" -- and then he gives you a
66:10 phone number -- "these days (working from home)."
66:11 Do you see that?

DX893.1.6

66:12 A. I do.

66:13 Q. Okay. And then in the attachment section it
66:14 says, "Dugger Declaration pdf - Extension."
66:15 Do you see that?

DX893.1.7

66:16 A. I do.

66:17 Q. Okay. So do you know what a .pdf is?

66:18 A. I do.

66:19 Q. Are you able to edit a .pdf document?

66:20 A. You are not.

66:21 MR. HYNES: Okay. Let's go to the next page.

DX893.2

66:22 Q. (By Mr. Hynes) And this is -- do you
66:23 recognize this?

66:24 A. So far, yes. Yeah.

66:25 Q. Okay. What is it?

67:1 A. The declaration.

67:2 Q. Did you make any changes at all to this
67:3 declaration?

67:4 A. Did -- did I make changes to the declaration?

67:5 Q. Yes. That's my question.

67:6 A. Well, what I'm reading right here, I don't
67:7 think I made any changes.

67:8 Q. Do you recall making any changes?

67:9 A. I'm not sure, to be honest with you.

DuggerCross

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67:10 Q. Okay. You don't know one way or the other
 67:11 whether you made any changes to the declaration that
 67:12 Mr. Wagner sent you?
 67:13 A. Well, I didn't make any changes to a .pdf
 67:14 file. I know that.
 67:15 Q. Did you call him on the phone and say I have
 67:16 to make a change or this is inaccurate or anything like
 67:17 that?
 67:18 A. I'd have to talk to Brian about that.
 67:19 Q. Why? Do you remember or --
 67:20 I'm sorry. Do you need -- do you need a
 67:21 moment? I'm sorry. Do you need a moment to deal with
 67:22 the work?
 67:23 A. No. Somebody just barged in my door. Sorry.
 67:24 Q. No. That's okay. If you have to take a
 67:25 moment to -- to deal with something, just let me know.
 68:1 A. No. I'm good. Thank you.
 68:2 Q. Okay. Why would you need to talk to the
 68:3 Rockies general counsel about that?
 68:4 A. Well, you're asking about did I make changes
 68:5 to this. I don't know. There might have been some edits
 68:6 that we talked about. I'm not sure.
 68:7 Q. Do you recall talking to somebody about making
 68:8 edits to the declaration?
 68:9 A. The only person that I would have talked to is
 68:10 Brian.
 68:11 Q. Okay. As you sit here today, do you recall
 68:12 making any changes to the declaration that Mr. Wagner
 68:13 sent you on April 4th, 2020?
 68:14 A. I don't recall.
 68:15 Q. Okay. Can you look at paragraph 6 of this
 68:16 Rockies 326? Do you see where that paragraph --
 68:17 paragraph 6, it starts with, "In these interactions
 68:18 consistently since at least prior to 2010."
 68:19 Do you see that?
 68:20 A. "Since at least prior to 2010." Yeah.
 68:21 Q. Yeah.
 68:22 Do you -- do you -- do you know how -- how
 68:23 that date was selected?
 68:24 A. The exact date, 2010?

DX893.2.1

DX893.2.2

DuggerCross

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68:25 Q. Yeah.

69:1 A. That's about the first time I think I ever --

69:2 close to the first time I ever met Efraim.

69:3 MR. HYNES: Well, can you scroll up to

69:4 paragraph 4?

DX893.2.3

69:5 Q. (By Mr. Hynes) It says you've been familiar

DX893.2.4

69:6 with him for 15 years.

69:7 A. I've ordered from him for 15 years.

69:8 Q. Yeah. So --

69:9 A. I knew of him prior to me ordering from him.

69:10 Q. Well, 2020 minus 15 is 2005, but that

69:11 says "2010."

69:12 A. Yeah.

69:13 Q. So my question is do you know how 2010 was

69:14 selected?

69:15 A. As probably the closest date I could

69:16 recollect, but I don't know.

69:17 Q. That was probably the closest date you

69:18 could --

69:19 Did you choose 2010?

69:20 A. I believe so.

69:21 Q. You don't know one way or the other, though,

69:22 do you?

69:24 - 71:6

Dugger, Keith 07-20-2021 (00:01:28)

DuggerCross.10

69:24 THE WITNESS: I -- I believe I chose 2010 as

69:25 kind of a guesstimate of the time frame.

70:1 Q. (By Mr. Hynes) It's a guesstimate of the time

70:2 frame?

70:3 A. Yeah.

70:4 Q. So you don't know whether it's 2010.

70:5 A. It's the -- it's the best guess -- best date I

70:6 can give you or closest to the timeline.

70:7 MR. HYNES: Go to the next sent- -- next

70:8 paragraph, please.

70:9 Q. (By Mr. Hynes) There's 2010 again.

DX893.2.5

70:10 How was that date selected?

70:11 A. Probably the same thing: When he started his

70:12 presentations at PBATS.

70:13 Q. I thought you testified earlier that you've

70:14 been hearing presentations from him since 2005?

DuggerCross

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70:15 A. I said approximately 15 years, yes.

70:16 Q. And 20 minus 15 is 2005, right?

70:17 A. If you take 15 from 20, yes.

70:18 Q. Yeah. So why didn't you put 2005 in here?

70:19 A. Because probably that's when I started to make

70:20 my orders. I don't think I made any orders way back

70:21 in 2005.

70:22 Q. Well, we -- I showed you an invoice before

70:23 from 2009, right?

70:24 A. Yes.

70:25 Q. Is it your testimony that you didn't make any

71:1 purchases from Lontex prior to 2009?

71:2 A. No. That isn't my testimony. I'm not sure

71:3 when I started my first orders with Lontex.

71:4 Q. Yep.

71:5 MR. HYNES: Okay. Val, can you pick -- pull

71:6 up Rockies 258, please?

DX895.1

71:7 - 72:4

Dugger, Keith 07-20-2021 (00:00:56)

DuggerCross.11

71:7 Q. (By Mr. Hynes) All right. This is another

DX895.1.1

71:8 e-mail from Mr. Wagner to you. It's -- and it says, "Hi

DX895.1.2

71:9 Keith. Resending the declaration with my short note

DX895.1.3

71:10 below." Smiley face.

DX895.1.4

71:11 Do you see that?

71:12 A. I do see that, yes.

71:13 Q. Do you recall Mr. Wagner -- oh, sorry.

71:14 And again, in the attachment line it says,

DX895.1.5

71:15 "declaration," dot, "pdf," right? Do you see that?

71:16 A. I'm looking. I'm sorry.

71:17 Q. That's okay. It's right above "Hi Keith." Do

71:18 you see it says "Attachment" in the heading there?

71:19 A. I do, yes.

71:20 Q. Yeah. It says dot, "pdf" again?

71:21 A. It does.

71:22 Q. Yeah. So that's another document that you're

71:23 unable to edit because it's a .pdf, right?

71:24 A. That's correct.

71:25 Q. Okay. Do -- do you know why he resent it to

72:1 you?

72:2 A. Not exactly. I don't right now, no.

72:3 Q. Okay.

DuggerCross

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72:6 - 73:13

72:4 MR. HYNES: Val, can you pull up Rockies 171,
Dugger, Keith 07-20-2021 (00:01:41)

DuggerCross.12

72:6 Q. (By Mr. Hynes) This document goes from
 72:7 Rockies 171 to 172.

DX896.1

72:8 All right. This is from you to Mr. Wagner --

DX896.1.1

72:9 right -- on April 8th, 2020? Do you see that?

DX896.1.2

72:10 A. I do.

72:11 Q. All right. It says, "Hi Ben, here is the

DX896.1.3

72:12 signed documents from Efraim."

72:13 Do you see that?

72:14 A. I do.

72:15 Q. And Efraim is Mr. Nathan, right?

72:16 A. That's correct. And that's his wrong name.

72:17 Q. That's okay. I just assume it's a typo,
 72:18 right?

72:19 A. Yeah.

72:20 Q. All right. So you signed this declaration for

72:21 Mr. Nathan, right?

72:22 A. I believe so.

72:23 Q. That's what you wrote, right?

72:24 A. Yes.

72:25 Q. Okay. But you testified a couple times he's
 73:1 not your friend, right?

73:2 A. It depends on your definition of a friend, and

73:3 that's what I was trying to get to you about.

73:4 Q. Okay. Are there any other people who aren't

73:5 your friends that you've signed sworn declarations for?

73:6 A. Sworn declarations for? No. I haven't signed

73:7 too many sworn declarations.

DX896.1.4

73:8 Q. Okay. Do you see that -- the Subject line is

73:9 blank and there is no attachment referenced here?

73:10 A. I do.

73:11 Q. Okay.

73:12 MR. HYNES: Can we go to the next document,

DX897.1

73:13 Val, which is LTX_EDPA_39977?

73:14 - 74:21

Dugger, Keith 07-20-2021 (00:01:39)

DuggerCross.13

73:14 Q. (By Mr. Hynes) Get it pulled up, but this is

DX897.1.1

73:15 an email you send later that same day to Mr. Wagner.

DX897.1.2

73:16 That's your name at the top right of the email?

73:17 MR. HYNES: Can you scroll or have the top of

DuggerCross

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73:18 the document so the witness can see it? Thank you, Val.

73:19 THE WITNESS: That is my name, yes.

73:20 Q. (By Mr. Hynes) Okay. And that -- sorry. And

73:21 that's your email address too?

73:22 A. Yeah.

73:23 Q. All right. What does the subject line say?

73:24 A. "Coolmax."

DX897.1.3

73:25 Q. And you associate COOLMAX with Lontex, right?

74:1 A. I do.

74:2 Q. All right. And then it says, "Hello Ben.

DX897.1.4

74:3 Following is my signed version of the photo's and

DX897.1.5

74:4 statement. If you have any questions please reach out."

74:5 Do you see that?

74:6 A. That's correct.

74:7 Q. Okay. Do you know -- there's no attachment

74:8 here, right, on the subject line?

74:9 A. Attachment?

74:10 Q. Yeah. Do you recall what photos you were

74:11 referring to in this email?

74:12 A. I do not right now.

74:13 Q. Okay.

74:14 MR. HYNES: Val, can you please pull

74:15 Mr. Dugger's April 8th, 2020 declaration?

DX898.1

74:16 THE WITNESS: My name is "Dugger." I'm sorry.

74:17 MR. HYNES: You know, I'm really -- it's the

74:18 Doogie/Dugger thing. It's my fault. I really don't mean

74:19 that, and I sincerely apologize. I've got to get your

74:20 name right. It's Mr. Dugger. I'm really sorry.

74:21 THE WITNESS: No problem.

74:22 - 75:18

Dugger, Keith 07-20-2021 (00:01:02)

DuggerCross.14

74:22 Q. (By Mr. Hynes) Okay. I'd like -- so you see

74:23 at the -- at the top it says, "Keith Dugger declares as

DX898.1.1

74:24 follows"?

74:25 A. That's correct.

75:1 MR. HYNES: Okay. And if -- can we scroll

DX898.2

75:2 down to the end, Val. Sorry.

75:3 Q. (By Mr. Hynes) That's your signature, is it

DX898.2.1

75:4 not?

75:5 A. That is.

75:6 Q. Did you -- and -- and it's 4/8 written in the

DX898.2.2

DuggerCross

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75:7 date line just above it; is that right?

75:8 A. That's correct.

75:9 Q. Okay. And it's -- I don't know how to say it.

75:10 It's kind of an unusual color. Do you have a pen like

75:11 that?

75:12 A. That is an unusual color. I couldn't tell you

75:13 that.

75:14 Q. Okay. I just want to make sure it's your

75:15 signature is all I'm trying to --

75:16 A. That is -- that is my signature.

75:17 MR. HYNES: All right. Can we scroll up a

DX898.1.2

75:18 little bit, Val? Please go to paragraph 6.

75:19 - 80:24

Dugger, Keith 07-20-2021 (00:05:27)

DuggerCross.15

75:19 Q. (By Mr. Hynes) There is the 2010 date we

DX898.1.3

75:20 talked about, right?

75:21 A. Yeah.

75:22 Q. And then the next paragraph, we see 2010

DX898.2.3

75:23 again, right?

75:24 A. I do.

75:25 Q. Okay. And then paragraph 8, it says,

DX898.2.4

76:1 "Attached as Exhibit A is a true and correct copy of an

76:2 email with photographs that I took of a Lontex product

76:3 and sent to Efraim Nathan as dated."

76:4 Do you see that?

76:5 A. I do.

76:6 Q. All right.

76:7 MR. HYNES: Can we scroll down? Keep going.

DX898.4.1

76:8 This is Exhibit A. Stop there.

76:9 Q. (By Mr. Hynes) Remember we looked at this

76:10 email before?

76:11 A. Yeah.

76:12 Q. Okay.

76:13 MR. HYNES: Keep scrolling down.

DX898.5

76:14 Q. (By Mr. Hynes) And that -- that picture is --

76:15 we've seen that before. That's Alan. That's the guy you

76:16 asked to take the pictures, right?

76:17 A. That's correct.

76:18 MR. HYNES: So can we scroll back up to the

DX898.2.5

76:19 declaration?

76:20 THE WITNESS: I took pictures along with Alan

DuggerCross

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76:21 too. So that was a combination of Alan's pictures and
76:22 myself.

76:23 Q. (By Mr. Hynes) Well, this says, "Attached as
76:24 Exhibit A is a true and correct copy of an email with
76:25 photographs that I took of a Lontex product and sent to
77:1 Efraim Nathan as dated," right?

DX898.2.6

77:2 A. That's what it says.

77:3 Q. That's not accurate, though, is it?

77:4 A. In the context, probably not, because Alan
77:5 took some of the pictures too.

77:6 MR. HYNES: Okay. Let's scroll down. Can you
77:7 keep going, Val? I'm sorry.

DX898.5

77:8 Q. (By Mr. Hynes) Yeah. So that says "Alan" on
77:9 the top there, right?

77:10 A. Yeah.

77:11 Q. Okay. So then that picture right there is one
77:12 that Alan took, right?

77:13 A. Yes.

77:14 MR. HYNES: Okay. Let's keep going, Val,
77:15 please.

DX898.6

77:16 Q. (By Mr. Hynes) And then that one, the next
77:17 one on the left side, that's a picture that Alan took?

DX898.7

77:18 A. How do you know that's from Alan?

77:19 MR. HYNES: I'm sorry, Val. Can you just
77:20 scroll up to the top where it says "Alan," please?

DX898.5 - DX898.5.1

77:21 Q. (By Mr. Hynes) All right. That says "Alan"?

77:22 A. Yes.

77:23 Q. And you -- you exchange text messages, don't
77:24 you?

77:25 A. Do I exchange text messages?

78:1 Q. Yeah.

78:2 A. Yeah.

78:3 Q. All right. So this is on the left side of the
78:4 screen, right?

78:5 A. I don't quite understand what you mean "left
78:6 side of the screen."

78:7 Q. Well, when you exchange text messages, like,
78:8 one person talks, it's on the left side; and the next
78:9 person talks, it's on the right. That's how you tell who
78:10 said what, right?

DuggerCross

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78:11 A. Well, I just learned something. I did not
78:12 know that.

78:13 Q. You didn't know that?

78:14 A. I didn't. And I get a thousand text messages
78:15 a day.

78:16 Q. So who took this picture on the left side?

78:17 A. It's either Alan or myself. It says "Alan."

78:18 Q. And your declaration says that you took it.

78:19 A. The photos that I sent him I said, yes, these
78:20 are the photos that I took.

78:21 Q. So who took this photo?

78:22 A. This one is saying Alan Bossart.

78:23 Q. All right. And the second photo --

DX898.5.2

78:24 MR. HYNES: Can you scroll down, Val --

78:25 Q. (By Mr. Hynes) -- which has the tag, who took
79:1 that one?

79:2 A. I couldn't tell you.

79:3 MR. HYNES: Okay. Let's keep scrolling down.

79:4 Q. (By Mr. Hynes) All right. Who took that one?

DX898.6

79:5 A. It's either me or Alan.

79:6 Q. You don't know?

79:7 A. Well, if you scroll up, and I can look at
79:8 where the -- scroll up a little bit, and I can tell you.

79:9 Q. Um-hum.

79:10 A. That's Alan.

79:11 Now go back to the other. Yeah. I -- I don't
79:12 know.

79:13 MR. HYNES: Okay. Keep scrolling down.

79:14 Q. (By Mr. Hynes) How about this one?

DX898.7 - DX898.7

79:15 A. I could go into my phone and look to see if I
79:16 still have those pictures.

79:17 Q. Well, didn't you go back and look into your
79:18 phone for documents that related to this lawsuit before
79:19 we entered this deposition?

79:20 A. I looked at conversations with Lontex. I
79:21 didn't look with Alan Bossart.

79:22 Q. Well, these -- these photographs were attached
79:23 to your declaration by whom?

79:24 A. These photographs were attached to the
79:25 declaration I sent to them.

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80:1 Q. Yeah. And they're Lontex, right?

80:2 A. That's correct.

80:3 Q. So I should have them. If -- if you took the

80:4 photographs yourself, I would have them, because you sent

80:5 them to Lontex, right?

80:6 A. You -- you have everything that I've taken,

80:7 yes.

80:8 MR. HYNES: Okay. Let's go down. Keep

80:9 scrolling.

80:10 Q. (By Mr. Hynes) It's the one with the

DX898.8

80:11 stitching. Did you take that one?

80:12 A. I -- either -- again, it's either Alan Bossart

80:13 or myself.

80:14 MR. HYNES: Keep scrolling down, please.

80:15 Q. (By Mr. Hynes) This one? Is that Bossart?

DX898.9

80:16 A. No. I know for sure that's Alan Bossart.

80:17 MR. HYNES: Okay. Keep scrolling.

80:18 Q. (By Mr. Hynes) And here's that pamphlet

DX898.10

80:19 again, right?

80:20 A. Yeah.

80:21 Q. Okay.

80:22 MR. HYNES: Keep scrolling down.

80:23 All right. That's the end of the document.

80:24 Okay. Let's put that one away.

clear

81:3 - 81:3

Dugger, Keith 07-20-2021 (00:00:03)

DuggerCross.16

81:3 Val, can you please pull up Rockies 517?

DX899.1

81:4 - 81:5

Dugger, Keith 07-20-2021 (00:00:09)

DuggerCross.17

81:4 Q. (By Mr. Hynes) This document bears the Bates

81:5 Stamp Rockies 517 through 520. Okay.

81:6 - 89:12

Dugger, Keith 07-20-2021 (00:11:05)

DuggerCross.18

81:6 MR. HYNES: Can you go to 518, please, Val, at

DX899.2

81:7 the bottom?

DX899.2.1

81:8 Q. (By Mr. Hynes) Okay. That's an email from

81:9 you to Mr. Wagner on March 12th, 2021, right, Mr. Dugger?

DX899.2.2

81:10 A. That is correct.

81:11 Q. Okay. It says, "I got a text from Efraim" and

DX899.2.3

81:12 would like to talk to me and my attorney -- "that you

81:13 would like to talk to me and my attorney Brian Gaffney at

81:14 some time soon. Brian and myself are free in the

81:15 mornings on Tuesday and Wednesdays from 9:00 to 11:00."

DuggerCross

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ID

81:16 Do you see that?

81:17 A. That's correct.

81:18 Q. Why did -- do you know why Mr. Nathan wanted

81:19 you to talk to Mr. Wagner in or around March, 2021?

81:20 A. I think that was the first time, probably, to

81:21 talk about items that I sent.

81:22 Q. Do you remember anything he said other than

81:23 that?

81:24 A. During our meeting?

81:25 Q. Well, this says, "I got a text from Mr. Nathan

82:1 that you wanted to talk to me and my attorney sometime

82:2 soon."

82:3 Do you remember if he said anything else in

82:4 that text message?

82:5 A. That's pretty much all I -- I remember is he

82:6 needed to talk to Brian and myself.

82:7 MR. HYNES: Okay. Can we scroll up, please,

DX899.2.4

82:8 Val, to the next email? Here we go.

82:9 Q. (By Mr. Hynes) "Keith, that works great for

82:10 Mr. Wagner. Just let me know the time for a call," and

82:11 he sends a dial-in, right?

82:12 A. That's right.

82:13 MR. HYNES: Okay. Can you scroll up, please?

DX899.2.5

82:14 Q. (By Mr. Hynes) And you say, "I think the 17th

82:15 at 10 o'clock Arizona time will work just fine," right?

82:16 A. That's correct.

82:17 MR. HYNES: Okay. Can you scroll up, Val?

DX899.1.1

82:18 Q. (By Mr. Hynes) "Thank -- "Thank you. Talk to

DX899.1.2

82:19 you Tuesday on our conference call line, from

82:20 Mr. Wagner." Scrolling up. And then there is a calendar

DX899.1.3

82:21 invite there, right?

82:22 A. Yes.

82:23 Q. Okay. Did you talk to Mr. Wagner in

82:24 mid-March, 2021?

82:25 A. I did.

83:1 Q. What did you talk about?

83:2 A. We talked about the photos that I sent to

83:3 Efraim. We talked about COOLMAX. We talked about how

83:4 there was a potential case, I guess, trademarked -- I

83:5 don't know the correct lingo -- by Nike, and that was

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83:6 about it.

83:7 Q. How long did that conversation last?

83:8 A. I can't tell you exactly. It wasn't too

83:9 long. 15, 20 minutes, maybe.

83:10 Q. And that was the -- the second time you had

83:11 spoken to Mr. Wagner?

83:12 A. Yeah. I -- I don't know exactly how many

83:13 times I had spoken to Ben, you know --

83:14 Q. Well, at least -- at least -- would you agree

83:15 with me it was at least twice by this point in time?

83:16 A. On the phone, it might be the first time.

83:17 Text or email or -- excuse me -- email, maybe -- you

83:18 know, you just showed me a couple times prior to that.

83:19 Q. Well, I'll tell you what I thought I read in

83:20 the documents. If I got it wrong, please help me. But I

83:21 thought you had a conversation with Mr. Wagner before you

83:22 signed the declaration. Right?

83:23 A. I did, yeah. Yeah.

83:24 Q. And then there's this conference-call

83:25 information here. So this would be the second time you

84:1 spoke with him, right?

84:2 A. Yeah.

84:3 Q. At least.

84:4 A. Yes.

84:5 Q. Okay. Do you remember whether or not this was

84:6 the second time or whether it was more, or are you not

84:7 sure?

84:8 A. I'm not sure.

84:9 MR. HYNES: Okay. Let's scroll up. So is

84:10 this the top of the document? I'm sorry.

84:11 Q. (By Mr. Hynes) Okay. So you said you talked

84:12 about -- I just wrote it down -- COOLMAX, right?

84:13 A. COOLMAX and COOL COMPRESSION.

84:14 Q. What did you -- what did you talk -- talk

84:15 about those terms for?

84:16 A. How I associated the names with SWEAT IT OUT

84:17 company.

84:18 Q. And who -- who was the first person to raise

84:19 the phrase "COOL COMPRESSION" on that call?

84:20 A. I have no idea.

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84:21 Q. What did you talk about COOLMAX? What was
84:22 that conversation about COOLMAX?
84:23 A. COOLMAX and COOL COMPRESSION are all
84:24 associated with SWEAT IT OUT, like I told you. Probably
84:25 on -- regarding Efraim's case or potential case.
85:1 Q. Okay. Any other -- any- -- anything else you
85:2 recall about your conversation with Mr. Wagner about
85:3 COOLMAX and COOL COMPRESSION?
85:4 A. Most of my conversations with Mr. Wagner are
85:5 very short, even the ones when Mr. Gaffney was with me.
85:6 Q. I -- I just asked you what else you remembered
85:7 about your discussion with Mr. Wagner about COOLMAX and
85:8 COOL COMPRESSION in mid-March of 2021.
85:9 A. Well, we talked about if I've ever -- if I
85:10 ever recalled Nike using Cool Compression.
85:11 Q. And what did you say at that time?
85:12 A. I'm sure I told him I had.
85:13 Q. Do you remember?
85:14 A. I remember, yes, I do.
85:15 Q. That's what you told him?
85:16 A. Yeah.
85:17 Q. Okay. Did you tell him where you'd seen Cool
85:18 Compression at that time used by Nike?
85:19 A. I did.
85:20 Q. Okay. Did you send him any information or any
85:21 documents that showed Nike using Cool Compression?
85:22 A. I don't know. I don't recall.
85:23 Q. Did -- did he send you documents after this
85:24 call?
85:25 A. After this call? I don't know.
86:1 Q. You don't know?
86:2 A. I don't.
86:3 Q. You said you also talked about the photographs
86:4 you took. What did you talk about with respect to those
86:5 photographs?
86:6 A. Just the labeling. Basically where have I
86:7 seen COOLMAX and COOL COMPRESSION labeling.
86:8 Q. And what did you tell him?
86:9 A. I told him I've seen it -- I've seen it on the
86:10 labels inside of the garments, on packaging and COOL

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86:11 COMPRESSION every time Efraim's talked -- spoke to us at
86:12 the various events, the PBATS seminars.

86:13 Q. Um-hum. Anything else about the photographs
86:14 you discussed with Mr. Wagner?

86:15 A. Don't recall.

86:16 Q. And then you said the "potential case." You
86:17 talked about the "potential" -- is that -- is that what
86:18 you said?

86:19 A. That is what I just said, yeah.

86:20 Q. Okay. Well, the case was ongoing at that
86:21 time. That's the only reason -- did you understand that
86:22 Mr. Nathan had already sued Nike as of March, 2021?

86:23 A. I did not know that.

86:24 Q. Okay. Well, what -- what -- what did
86:25 Mr. Wagner tell you about the potential case at that
87:1 time?

87:2 A. I believe it was regarding the trademark
87:3 COOLMAX and COOL COMPRESSION.

87:4 Q. What about -- what specifically did he tell
87:5 you?

87:6 A. That Nike has used it in some of their
87:7 advertising and that have I ever seen it in their
87:8 advertising in the past, and I have.

87:9 Q. What else did he tell you?

87:10 A. That was basically it. We were talking about
87:11 SWEAT IT OUT products: COOL COMPRESSION and COOLMAX.

87:12 Q. Did he tell you that there was already a
87:13 lawsuit pending or did he tell you there was a potential
87:14 case?

87:15 A. I believe that there -- there was going to be
87:16 a lawsuit but not about -- the "potential case" was --
87:17 that -- that's my verbiage.

87:18 Q. Is it your testimony that when you spoke to
87:19 Mr. Wagner in March of 2021 you were not aware that
87:20 Lontex had sued Nike?

87:21 A. March of 2020 --

87:22 Q. I'm sorry. If I misspoke, I'll repeat the
87:23 question. Thank you for -- for that.

87:24 Is it your testimony that when you had this
87:25 conversation with Mr. Wagner in March of 2021 that you

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88:1 were not aware that Lontex had sued Nike in federal
88:2 court?

88:3 A. That is correct. I did not know that at that
88:4 time.

88:5 Q. Okay. You had already signed a declaration,
88:6 though, correct?

88:7 A. I signed it whatever that date was, April --

88:8 Q. April, 2020.

88:9 A. Yeah. April. Yeah.

88:10 Q. Did you have an understanding of how that
88:11 signed declaration would be used?

88:12 A. Yes.

88:13 Q. What was your understanding?

88:14 A. Basically, it's my testimony, if I've ever
88:15 answered the questions right there, and potentially you
88:16 would be asking me questions, meaning -- "you," meaning
88:17 Nike -- about how I understand the term or trademark COOL
88:18 COMPRESSION.

88:19 Q. Did you have any -- did you cover anything
88:20 else in your telephone conversation with Mr. Wagner in
88:21 mid-March of 2021?

88:22 A. Not that I can recall.

88:23 Q. Okay.

88:24 A. 2020.

88:25 Q. This conversation occurred in March of 2021,
89:1 right? That's what I'm talking about right now. If you
89:2 look at the email right here, it's only a couple months
89:3 ago, right?

89:4 A. Yeah. This one did. I'm sorry.

89:5 Q. That's okay.

89:6 A. Yeah.

89:7 Q. Did you talk about a deposition happening
89:8 during that call?

89:9 A. I don't know.

89:10 Q. Okay.

89:11 MR. HYNES: Can you go to Rockies 377, Val,
89:12 please?

DX900.1

89:13 - 92:24

Dugger, Keith 07-20-2021 (00:04:19)

DuggerCross.19

89:13 Q. (By Mr. Hynes) Okay. This is an email from
89:14 you, Mr. Dugger -- it says "Rockies 377" on the bottom

DX900.1.1

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89:15 -- to Jodi.Thomas@troutman.com.

DX900.1.2

89:16 Do you see that?

89:17 A. I do see that.

89:18 Q. Do you know who Jodi Thomas is?

89:19 A. I have no idea.

DX900.1.3

89:20 Q. Okay. And it says, Subject line, "Accepted

89:21 T," slash, "C, Ben Wagner," slash, "Keith Dugger" --

89:22 "Dugger" -- sorry -- "re SWEAT IT OUT," slash, "Efraim's

89:23 case."

89:24 Do you see that?

89:25 A. I do.

DX900.1.4

90:1 Q. And that's sent Wednesday, March 17th, 2020.

90:2 Do you see that?

90:3 A. I do.

90:4 Q. Does that refresh your recollection that you

90:5 had a telephone conversation with Mr. Wagner on

90:6 March 17th, 2021 regarding Mr. Nathan's case?

90:7 A. I don't recall the conversation at this point

90:8 in time, no.

90:9 Q. Okay.

DX901.1

90:10 MR. HYNES: Val, can you please pull up

DX901.1.1

90:11 Rockies 507? Can you go to the very top of the email,

90:12 Val?

DX901.1.2

90:13 Q. (By Mr. Hynes) All right. It says "from Ben

90:14 Wagner" to -- to you, right?

90:15 A. That's correct.

DX901.1.3

90:16 Q. And it says, "Hi Keith and Brian - some picks

90:17 attached for our call," and there is a whole bunch of

90:18 attachments, .jpgs and a .pdf.

DX901.1.4

90:19 Do you see that?

90:20 A. I do see that.

90:21 Q. Did you receive this email?

90:22 A. Yes, I believe I received this email.

90:23 Q. Did you review all the attachments?

90:24 A. I'm sure I did, yes.

90:25 Q. Did you go over those attachments with

91:1 Mr. Wagner during your call with Mr. Wagner?

91:2 A. I believe I did.

91:3 Q. All right.

DX901.5

91:4 MR. HYNES: Can we go to the first picture,

DuggerCross

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91:5 Val, which appears on Rockies 130?

91:6 Q. (By Mr. Hynes) What's that, Mr. Dugger?

91:7 A. Say that again.

91:8 Q. Do you know what that is?

91:9 A. It looks like a picture of the Dri-FIT Nike

DX901.5.1

91:10 Pro Cool Compression sleeve.

91:11 Q. Mr. Wagner sent that to you, didn't he?

91:12 A. If it was part of the group of those pictures

91:13 that were sent to me, yes.

91:14 Q. Do you remember or -- or not?

91:15 A. I remember.

91:16 Q. Okay. And then you talked about that during

91:17 your call with him, right?

91:18 A. Yes, I did.

91:19 Q. And then you testified under oath today that

91:20 Nike advertised Nike Pro Cool Compression in catalogs,

91:21 right?

91:22 A. In pamphlets.

91:23 Q. In pamphlets.

91:24 A. Or brochure.

91:25 Q. Yeah.

92:1 MR. HYNES: Go to Rockies 131.

DX901.6

92:2 Q. (By Mr. Hynes) What's this?

DX901.6.1

92:3 A. Rockies 130 Nike Pro Cool.

92:4 Q. I'm sorry. There you go.

92:5 Where is that from? Do you know?

92:6 A. I don't know because I don't recognize -- it

92:7 doesn't have the baseball guys on there that I --

92:8 Q. Yeah. So Mr. Wagner sent it to you, though,

92:9 right?

92:10 A. I can't recall that. I remember the baseball

92:11 guys specifically, you know, the shirts underneath.

92:12 MR. HYNES: Can you scroll down a little bit,

92:13 Val?

DX901.6.2

92:14 Q. (By Mr. Hynes) So that says "Rockies 131" on

92:15 the bottom of the page, right?

92:16 A. Yeah.

92:17 Q. So that means that that -- all this came from

92:18 your emails, right?

92:19 A. Just -- just means that I don't remember that

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92:20 specific picture.

92:21 MR. HYNES: All right. Can you go back up to

DX901.6.1

92:22 the picture for me, Val?

92:23 Q. (By Mr. Hynes) Do you know where Mr. Wagner

92:24 got this picture?

93:2 - 95:24

Dugger, Keith 07-20-2021 (00:03:06)

DuggerCross.20

93:2 Q. (By Mr. Hynes) Mr. Dugger, this picture was

93:3 sent to you by Mr. Wagner, right?

93:4 A. I can't recall this specific picture, no.

DX901.1.2

93:5 MR. HYNES: Okay. Let's go back up to the top

93:6 of the document, please.

93:7 THE WITNESS: But the one with the baseball, I

93:8 do remember.

93:9 Q. (By Mr. Hynes) I'm just looking right here.

93:10 Okay? This says from "Ben.Wagner@troutman.com."

93:11 That's Mr. Wagner, right?

93:12 A. That's Mr. Wagner, correct.

93:13 Q. And it says "To Keith.Dugger@rockies.com."

93:14 That's you, right?

93:15 A. It is.

DX901.1.5

93:16 Q. And do you see all those attachments?

93:17 A. I do.

93:18 Q. And it says "Images 006, 007, 008, 009, 0010,

93:19 011, 012," right?

93:20 A. That's correct.

93:21 Q. What does that mean to you?

93:22 A. That means pictures.

DX901.5

93:23 MR. HYNES: Okay. Let's scroll back down.

93:24 First picture, Val. First picture.

93:25 Q. (By Mr. Hynes) Isn't it -- do you have any

94:1 reason to believe that you didn't get this picture as

94:2 part of this email?

94:3 A. 100 percent I got that picture as part of the

94:4 email.

DX901.6.1

94:5 MR. HYNES: All right. Second image, let's go

94:6 to that one.

94:7 Q. (By Mr. Hynes) How about this email?

94:8 A. I can't tell you.

94:9 Q. Don't know --

94:10 A. Don't --

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94:11 Q. -- one way or the other?
 94:12 A. Don't recall that picture.
 94:13 Q. All right. Do you know where this Nike Pro
 94:14 Cool Compression image comes from originally?
 94:15 A. Originally?
 94:16 Q. Yeah. Any idea?
 94:17 A. Zero idea.
 94:18 MR. HYNES: All right. Let's go to the next
 94:19 one.
 94:20 Q. (By Mr. Hynes) What's that?
 94:21 A. REI ad, Nike Pro Cool Compression tights.
 94:22 Q. Yep. Mr. Wagner sent this picture to you?
 94:23 A. I've seen this picture before.
 94:24 Q. You've seen this picture before?
 94:25 A. I have, yeah.
 95:1 Q. When did you see it?
 95:2 A. Again, I don't know if this was one of the
 95:3 pictures he sent -- sent to me because I haven't looked
 95:4 at pictures. I've seen this picture.
 95:5 Q. Well, I mean, this picture is attached to the
 95:6 email Mr. Wagner sent you.
 95:7 Apart from that, have you seen the picture
 95:8 before? Is that what you're saying? I don't understand.
 95:9 A. Well, I've seen this picture before.
 95:10 Q. Where have you seen it other than the picture
 95:11 Mr. Wagner sent you?
 95:12 A. Could have been on the Internet, for all I
 95:13 know.
 95:14 Q. Well, does it -- who else would know where you
 95:15 saw it before? Do you know where you saw it before?
 95:16 A. Do I know exactly where I saw this picture
 95:17 before? I've seen this picture on the Internet.
 95:18 Q. When did you go on the Internet and look at
 95:19 Nike Cool Compression pants?
 95:20 A. I don't know. I don't necessarily know that I
 95:21 was looking for Nike Pro Cool Compression pants.
 95:22 Q. You just stumbled upon this exact
 95:23 advertisement while you were on the Internet; is that
 95:24 your testimony?

DX901.7.1

96:1 - 98:13

Dugger, Keith 07-20-2021 (00:03:15)

DuggerCross.25

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96:1 THE WITNESS: My testimony is I've seen this
96:2 ad before.

96:3 Q. (By Mr. Hynes) My question is where, other
96:4 than --

96:5 A. My answer is I don't know --

96:6 Q. Okay.

96:7 A. -- unless it's the photo that was sent to me
96:8 or on the Internet.

96:9 Q. All right.

96:10 MR. HYNES: Let's go to the next page.

DX901.8.1

96:11 Q. (By Mr. Hynes) Remember earlier when you
96:12 testified that you had seen Nike at Dick's before?

96:13 A. I have.

96:14 MR. HYNES: Can you scroll -- can you reveal
96:15 the top of this picture a little better for me?

96:16 Q. (By Mr. Hynes) What does that say? "Dick's,"
96:17 right?

96:18 A. "Dick's."

96:19 Q. So Mr. Wagner sent you an advertisement from
96:20 Dick's with Nike's Pro Cool Compression tights, right?

96:21 A. He could have sent me pictures from Dick's,
96:22 but I've seen pictures from Dick's.

96:23 Q. So you had a conversation with Mr. Wagner in
96:24 March of 2021. He sent you an advertisement for Dick's

96:25 Sporting Goods that has Nike's Pro Cool Compression

97:1 tights. And then you testified today in response to

97:2 Mr. Wagner's questions that Nike sells Cool Compression
97:3 tights at Dick's, right?

97:4 A. I testified that I have seen Nike advertise

97:5 Pro Cool Compression.

97:6 MR. HYNES: Let's scroll down a little bit

97:7 here. Sorry. A little up, Val. Sorry. The second half

97:8 of this page Rockies 133. Right -- right -- sorry, Val.

97:9 Right there. That's fine.

97:10 Q. (By Mr. Hynes) Do you see where it says, "I

97:11 declare under penalty of perjury and under the laws of

97:12 the United States of America the foregoing is to true and

97:13 correct. Executed May 20, 2020," signed by Chris

97:14 Peduzzi? Do you see that?

97:15 A. I do see that, yes.

DX901.8.2

DX901.8.3

DuggerCross

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97:16	Q. Who is Chris Peduzzi?	
97:17	A. I have no idea.	
97:18	Q. Did you talk about that on your call with	
97:19	Mr. Wagner: Chris Peduzzi?	
97:20	A. No. I've never seen that name or paid	
97:21	attention to this. I've never seen that.	
97:22	Q. Mr. Dugger, I understand that it's your	
97:23	preference not to appear at the trial in this case; is	
97:24	that right?	
97:25	A. My preference? Yeah. That would be my	
98:1	preference.	
98:2	Q. Are you unavailable to appear at the trial in	
98:3	this case?	
98:4	A. I am with my job typically.	
98:5	Q. Do you know when the trial is?	
98:6	A. I have no idea.	
98:7	Q. So if you don't know when the trial is, how do	
98:8	you know that you're unavailable for trial?	
98:9	A. My preference would be not to be there. It	
98:10	depends on when the trial is. If it's during the season,	
98:11	it's almost impossible for me to get away.	
98:12	MR. HYNES: Can you go to Rockies 379, Val,	
98:13	please. I'm sorry. Can you make it Rockies 96?	DX902.1
98:14 - 100:11	Dugger, Keith 07-20-2021 (00:02:05)	DuggerCross.21
98:14	Q. (By Mr. Hynes) All right. This is an email	DX902.1.1
98:15	from Jodi, dot, Thomas@troutman.com to Mr. Gaffney,	DX902.1.2
98:16	Mr. Wagner, and yourself, right?	DX902.1.3
98:17	A. That is correct.	
98:18	Q. And it says, "Telephone conference depo prep,	DX902.1.4
98:19	Friday, July 16th, 2021."	DX902.1.5
98:20	Do you see that?	
98:21	A. That is correct.	
98:22	Q. Did you prepare with Mr. Wagner for your	DX902.1.6
98:23	testimony today?	
98:24	A. I prepared with -- today?	
98:25	Q. I'm sorry. That was -- that was a poor	
99:1	question.	
99:2	Do you recall that -- Mr. Wagner asked you a	
99:3	series of questions to be presented to the jury in this	
99:4	case before I started questioning you, right?	

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99:5	A. That's correct.	
99:6	Q. Okay. Did you rehearse that with Mr. Wagner	
99:7	before it happened?	
99:8	A. Did I rehearse the questions that he was going	
99:9	to ask me?	
99:10	Q. Yeah.	
99:11	A. We did go over some questions.	
99:12	Q. Did you go over the questions that he asked	
99:13	you?	
99:14	A. Some of them, yes.	
99:15	Q. And did you tell him what you were going to	
99:16	say in response to those questions?	
99:17	A. I just answered the questions. He didn't	
99:18	respond either way.	
99:19	Q. During this call that you had with him before	
99:20	the deposition? Is that your testimony?	
99:21	A. "During this call." During the call on	
99:22	Friday, I did talk to him about questions, yes.	
99:23	Q. Okay. How long did you talk to him on Friday?	
99:24	A. It wasn't very long; 20 minutes, maybe.	
99:25	Q. So that's at least the third time you spoke	
100:1	with Mr. Wagner on the phone about this case, then,	
100:2	right?	
100:3	A. If you're counting yesterday, yes.	
100:4	Q. Four times from -- counting today?	
100:5	A. I had not spoken to him today.	
100:6	Q. Well, he asked --	
100:7	A. Unless the questioning here on the Zoom.	
100:8	Q. Okay. But you did speak to him in preparation	
100:9	for today's examination by Mr. Wagner, right?	
100:10	A. That is correct.	
100:11	Q. Okay.	clear
100:16 - 100:17	Dugger, Keith 07-20-2021 (00:00:07)	DuggerCross.22
100:16	Hey, Val, can you please pull up the other	
100:17	declaration, please?	DX903.1
100:18 - 103:6	Dugger, Keith 07-20-2021 (00:04:59)	DuggerCross.23
100:18	Q. (By Mr. Hynes) You signed a second	
100:19	declaration, Mr. Dugger, didn't you?	
100:20	A. A second declaration?	DX903.1.1
100:21	Q. Yeah. This one that you see on the screen	

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100:22 now.

100:23 MR. HYNES: Val, can you make it bigger? I'm

100:24 sorry I don't have a hard copy for you, but Val will

100:25 scroll up and down so you can -- you can read it,

101:1 Mr. Dugger, and she'll follow your instructions so that

101:2 you can see the whole document. Okay?

101:3 THE WITNESS: Yes.

101:4 Q. (By Mr. Hynes) So I would -- I would ask you

101:5 to read it. It's only a couple of pages.

101:6 A. If she can scroll up. Yeah. Keep going.

101:7 Thank you.

101:8 Q. Okay. Do you want to start at the top or are

101:9 you on page 2 already?

DX903.2

101:10 A. I'm on page 2 already.

101:11 Q. Okay.

101:12 A. Keep going. Thank you. Again. Thank you.

101:13 Again. Okay. That's correct.

101:14 Q. Okay. I just have a few questions,

101:15 Mr. Dugger.

101:16 MR. HYNES: Can we go to paragraph 9, please,

DX903.2.1

101:17 Val, of this declaration?

101:18 Q. (By Mr. Hynes) Can you read Number

101:19 Paragraph 9 for me, Mr. Dugger, please?

101:20 A. "I'm not able to assign a date of purchase for

101:21 any of the individual Lontex compression garments in the

101:22 Colorado -- 'Colorado Rockies' currently stockpiles."

101:23 Q. And was that statement true as of June 1st,

101:24 2020?

101:25 A. That statement is true.

102:1 Q. And it's true today?

102:2 A. It's true today.

DX903.3.1

102:3 Q. Okay. Can you read line 15 for me, please?

102:4 A. "I have never mistakenly believed that Lontex

102:5 authorized Nike to use its 'COOL COMPRESSION'

102:6 technology."

102:7 Q. And was that true as of June 1st, 2020?

102:8 A. To my understanding, yes.

102:9 Q. Is it true today?

102:10 A. It's true today, yeah. My understanding.

102:11 Q. Okay. And can you read 16 for me, please?

DX903.3.2

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102:12 A. "I have never mistakenly believed that there
 102:13 were any affiliation or relationship between Lontex and
 102:14 Nike."
 102:15 Q. And did you -- did you believe that to be true
 102:16 as of June 1st, 2020?
 102:17 A. Yep.
 102:18 Q. And do you believe that to be true today?
 102:19 A. Yes.
 102:20 Q. Okay. Mr. Dugger, what I'm going to do now is
 102:21 I'm going to ask Val to identify for the record the
 102:22 emails and text messages and photographs that I asked you
 102:23 about today; but may I ask you, when you use your
 102:24 Colorado Rockies email address, are you sending and
 102:25 receiving messages in the ordinary course of your
 103:1 business?
 103:2 A. Yes.
 103:3 Q. Do you have any reason to believe you did not
 103:4 send or receive any of the emails or text messages that I
 103:5 showed you today where you were identified?
 103:6 A. No.

clear

105:18 - 105:19

Dugger, Keith 07-20-2021 (00:00:05)

DuggerCross.26

105:18 And with that, I'll tender the witness for
 105:19 redirect to Mr. Wagner.

Cross Examination by Mr. Hynes = 01:28:31


Total Time = 01:28:31**Documents Shown**


DX890
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Case Clips Detailed Report

10290_Lontex v Nike

 DUGGER, KEITH - VOL 1 - 7/20/2021 1 Clips (Running 00:09:48.188)

 DUGGER REDIRECT (Running 00:09:48.188)

1. Page 105:20 to 108:02 (Running 00:03:35.340)

20 MR. WAGNER: Thanks for your patience. We're
21 almost done. I just have a small handful of questions.
22 REDIRECT EXAMINATION
23 BY MR. WAGNER:
24 Q. Do you recall a moment ago speaking about the
25 June 2020 declaration that you signed?
01 A. Yes.
02 Q. Who drafted that declaration, if you know?
03 A. Who drafted that declaration? Well, it wasn't
04 me. It was either Mr. Wagner or Mr. Gaffney.
05 Q. Do you recall Nike contacting you about a
06 declaration sometime in 2020?
07 A. I do.
08 Q. Did you have any conversations with a Nike
09 representative about the contents of the declaration?
10 A. Yes. I believe myself and Mr. Gaffney spoke
11 to some people from Nike.
12 Q. Did you receive a draft declaration or did you
13 draft the declaration yourself?
14 A. I never drafted any declaration. I received
15 one from Nike, I believe, too.

Total Number of Clips:1

Total Number of Segments:9

Total Running Time:00:09:48.188

16 Q. Is that the June 1st, 2020 declaration?

17 A. Yes.

18 Q. And before Nike sent that declaration to you,
19 did they send you any pictures to help refresh your
20 recollection?

21 A. Did -- did Nike?

22 Q. Yes.

23 A. I don't recall.

24 Q. Did Nike share any materials with you to help
25 refresh your recollection?

01 A. I don't recall.

02 Q. In paragraph 15 of the June 1st declaration
03 you say, "I have never mistakenly believed that Lontex
04 authorized Nike to use its 'COOL COMPRESSION'
05 technology."

06 When you answered the question about this
07 paragraph a moment ago, you emphasized the word
08 "mistakenly." What did you mean in paragraph 15 of this
09 declaration?

10 A. I mean the way I'm reading it is that they
11 accidentally used the COOL COMPRESSION technology.

12 Q. And paragraph 16 reads, "I have never
13 mistakenly believed that there was any affiliation or
14 relationship between Lontex and Nike."

15 What did you mean by making that statement?

16 A. Well, I didn't think they were a joint venue

Total Number of Clips:1

Total Number of Segments:9

Total Running Time:00:09:48.188

17 [sic]. Meaning, I don't necessarily believe they work

18 together.

19 Q. So to be clear, do you believe that either of

20 these paragraphs is inconsistent?

21 A. Well, the -- the "authorized Nike to use its

22 'COOL COMPRESSION,'" where -- I mean, how would I know if

23 Nike -- if Lontex authorized Nike to use it? I . . .

24 Q. So for paragraph 15, is it your testimony

25 today that the exact mechanism/authorization is something

01 you would have no knowledge about?

02 A. That is correct.

2. Page 108:05 to 108:23 (Running 00:01:12.400)

05 Q. (By Mr. Wagner) Could you answer the

06 question? Could you say that again?

07 A. I have no idea.

08 Q. And is -- did you mean to say anything more

09 than that for paragraph 15 here?

10 A. I did not, no.

11 Q. On paragraph 16, does that mean that you have

12 never believed that there was an association between

13 Nike's use of Cool Compression and Lontex's use of COOL

14 COMPRESSION?

15 A. Well, the only thing that throws me off a

16 little bit is the COOL COMPRESSION, right? It's -- I

17 don't -- because I wasn't aware if there was an

18 authorized usage of that COOL COMPRESSION. But I have no

Total Number of Clips:1

Total Number of Segments:9

Total Running Time:00:09:48.188

19 idea if Lontex and Nike had any agreement at all.

20 Q. Did you at any point, outside this litigation,
21 understand Nike's use of Cool Compression for a
22 compression product to indicate that it had obtained the
23 technology that Lontex used for its compression products?

3. Page 109:01 to 109:13 (Running 00:00:38.289).

01 THE WITNESS: When I think of COOL
02 COMPRESSION, I think of Lontex and, you know, the lycra,
03 meaning what I explained earlier, that it can flex in
04 multiple directions and wick the moisture. So, you know,
05 I don't know how, you know, those companies can transfer
06 over to each other. So I'm not too sure. But when I --
07 when I actually see COOL COMPRESSION, again, I was
08 thinking of SWEAT IT OUT because that is -- that was my
09 only affiliation with COOL COMPRESSION at that point in
10 time.

11 Q. (By Mr. Wagner) And that included when you
12 saw it in reference to Nike's products?

13 A. That's correct.

4. Page 109:16 to 109:25 (Running 00:00:38.521).

16 Q. (By Mr. Wagner) How many times before signing
17 the June 1st declaration did you speak to Nike attorneys?

18 A. Well, only one that I can remember. I mean,
19 if I did talk -- talk to them, it's no more than two, but
20 I can only remember one.

21 Q. And how long was that conversation?

Total Number of Clips:1
Total Number of Segments:9
Total Running Time:00:09:48.188

22 A. Probably 20 minutes -- 20, 30 minutes, if

23 that.

24 Q. And did you talk about the facts or details

25 that appeared in the declaration that you received?

5. Page 110:04 to 111:25 (Running 00:02:09.249)

04 THE WITNESS: Did we talk about the details on

05 the declaration? Is that what you're asking?

06 Q. (By Mr. Wagner) Did you talk about -- let's

07 phrase it that way. Did you talk about the details of

08 the declaration with the Nike attorneys prior to

09 receiving the draft of the declaration?

10 A. Yeah. I believe so.

11 Q. And was that on the 20-minute call you just

12 referenced?

13 A. That's the only call that I can recall.

14 Q. And prior to today's trial deposition, did

15 Nike reach out to you again about the logistics for this

16 deposition?

17 A. Only on timing. Nothing directly to me that

18 I'm aware of, no.

19 Q. Did they tell you or your organization that

20 they were going to send a set of documents for you to

21 have prior to today's deposition?

22 A. I was told I was going to receive some kind of

23 box, which I still don't quite understand what it was.

24 Q. What was your understanding as to what was

Total Number of Clips:1

Total Number of Segments:9

Total Running Time:00:09:48.188

25 going to be in the box?

01 A. All I know is it was a sealed box that I would

02 have to open, basically, once I was on the Zoom. I had

03 no idea what was in it.

04 Q. So you testified earlier about Alan Bossart.

05 A. Yeah.

06 Q. How long has Alan Bossart worked with you?

07 A. Probably 20 years.

08 Q. Over the course of that 20 years --

09 A. Wait. Actually, I can rephrase that. He's

10 our longest employee of our Rockies organization.

11 Q. So more than 20 years?

12 A. That's correct.

13 Q. Do you guys often help each other out?

14 A. All the time. Yeah.

15 Q. When Rockies staff does something, do you ever

16 use the first person pronoun "I" when telling other

17 people who did it?

18 A. Sure I have, yeah.

19 Q. So if Alan Bossart took the pictures attached

20 to your declaration, and you sent those and said that "I

21 took those pictures," would that be an inaccurate

22 statement, in your mind, based on your ordinary course of

23 reference --

24 A. It should have been --

25 Q. -- to daily activities and Rockies activities?

Total Number of Clips:1

Total Number of Segments:9

Total Running Time:00:09:48.188

04 THE WITNESS: It should have been rephrased "I
05 sent the pictures," because I did take some of the
06 pictures, but I don't know which pictures I took too.
07 Q. (By Mr. Wagner) But it's common for you to
08 refer to things that other members of the Rockies staff
09 do in the first person as well, correct?
10 A. That's right.

7. Page 112:13 to 112:13 (Running 00:00:01.369)

13 THE WITNESS: Yes.

8. Page 112:14 to 112:21 (Running 00:00:26.810)

14 Q. (By Mr. Wagner) So Nike counsel showed you a
15 number of pictures that were, according to counsel, sent
16 to you by my office prior to conversations that we had.
17 Did seeing pictures or talking to Lontex's
18 attorneys ever cause you to create testimony --
19 A. No.
20 Q. -- that was not true?
21 A. No.

9. Page 112:24 to 113:15 (Running 00:00:49.689)

24 Q. (By Mr. Wagner) Would you ever, under oath,
25 testify falsely intentionally?
01 A. No. I have no reason to.
02 Q. Do you have any financial interest in the
03 outcome of this litigation?
04 A. Zero.

Total Number of Clips:1
Total Number of Segments:9
Total Running Time:00:09:48.188

05 Q. Do you have any financial interest in Lontex

06 Corporation?

07 A. Zero.

08 Q. Do you have any personal interest in whether

09 Mr. Nathan or Nike prevail in this lawsuit?

10 A. Honestly, I don't -- I don't care. I have no

11 personal interest.

12 MR. WAGNER: No further questions.

13 MR. HYNES: Thank you, Mr. Dugger. I

14 appreciate your time here today. I don't have anything

15 further.

Total Number of Clips:1


Total Number of Segments:9

Total Running Time:00:09:48.188

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Case Clips Detailed Report


10290_Lontex v Nike

 HALL, SHANNON R - VOL 1 - 10/23/2020 55 Clips (Running 00:20:05.705)

 HALL_007-19_07-21_CD (Running 00:00:06.790)


1. Page 07:19 to 07:21 (Running 00:00:06.790)

- 19 Q. Mr. Hall, could you please state your
20 full name for the record.
21 A. Yes. It's Shannon Richard Hall.

 HALL_014-03_14-13_D (Running 00:00:34.320)

1. Page 14:03 to 14:13 (Running 00:00:34.320)

- 03 Q. And did Nike.com Assist also have
04 product names that included cool compression during
05 the 2015 to 2017 time frame?
06 A. I'm not sure.
07 Q. Have you done any investigation to
08 determine one way or another whether that is so?
09 A. Yes.
10 Q. And what did your investigation turn
11 up?
12 A. That it's part of the product
13 description.

 HALL_014-14_14-16_D (Running 00:00:08.420)

1. Page 14:14 to 14:16 (Running 00:00:08.420)

- 14 Q. When you say "product description,"
15 do you mean the title above the picture of the
16 product on Nike.com Assist?

Total Number of Clips:55
Total Number of Segments:55
Total Running Time:00:20:05.705


1. Page 14:18 to 14:19 (Running 00:00:05.780)

18 A. Yes, part of our description would be
19 in that.

 HALL_014-20_D (Running 00:00:01.421)


1. Page 14:20 to 14:20 (Running 00:00:01.421)

20 Q. That field?

 HALL_014-23_14-24_D (Running 00:00:06.399)

1. Page 14:23 to 14:24 (Running 00:00:06.399)

23 A. It would be there, along with like
24 short-sleeve, long-sleeve, short, tight.

 HALL_014-25_15-03 (Running 00:00:11.541)


1. Page 14:25 to 15:03 (Running 00:00:11.541)

25 Q. And do you know if at any point in
01 the 2015 to 2017 time frame, that cool compression
02 moniker in that field would have been removed from
03 any of the accused products?

 HALL_015-16_D (Running 00:00:02.509)


1. Page 15:16 to 15:16 (Running 00:00:02.509)

16 A. I'm not aware.


 HALL_040-18_40-20_D (Running 00:00:09.460)

1. Page 40:18 to 40:20 (Running 00:00:09.460)

18 Q. So was there also a store binder or
19 binders that had information on products?
20 A. Yes.

 HALL_041-06_41-09_D (Running 00:00:11.710)

06 Q. What were in the binders that you
07 just testified were in stores?
08 A. We're talking about the text sheets,
09 so that was what I was referring to.

 **HALL_042-14_42-17_D** (Running 00:00:12.630)

1. Page 42:14 to 42:17 (Running 00:00:12.630)

14 Q. What was the purpose of these
15 binders?
16 A. The binder would have been for
17 athletes to reference to learn about product.

 **HALL_042-18_42-19_CD** (Running 00:00:03.071)


1. Page 42:18 to 42:19 (Running 00:00:03.071)

18 Q. What products would have been
19 included in them?

 **HALL_042-21_42-25_CD** (Running 00:00:17.300)

1. Page 42:21 to 42:25 (Running 00:00:17.300)

21 A. We have thousands of products. So, I
22 mean, there could be something -- a text sheet on
23 technology. There could be a text sheet focused on
24 footwear, apparel. It depends on that store and
25 what product they carry.


 **HALL_046-20_46-21_D** (Running 00:00:02.450)

1. Page 46:20 to 46:21 (Running 00:00:02.450)

20 Q. What else can you tell me about these
21 binders?

1. Page 46:24 to 46:24 (Running 00:00:03.331)

24 A. That they would contain text sheets.

 HALL_046-25_47-02_D (Running 00:00:11.804)

1. Page 46:25 to 47:02 (Running 00:00:11.804)

25 Q. And what are text sheets?

01 A. It is a description of the product

02 that includes features and benefits.


 HALL_047-22_47-24_CD (Running 00:00:13.100)

1. Page 47:22 to 47:24 (Running 00:00:13.100)

22 Q. Mr. Hall, are employees at Nike-owned

23 stores assigned to particular areas of the store?

24 A. Yes, some of them are.

 HALL_048-03_48-21_D (Running 00:01:21.870)

1. Page 48:03 to 48:21 (Running 00:01:21.870)

03 Q. How many areas does an athlete

04 usually cover?

05 A. Depends on the store and the team and

06 the size of that team, but I think there is

07 potentially seven areas.

08 Q. What are those areas?

09 A. You could be a cashier, fitting room,

10 men's apparel, women's apparel, men's footwear,

11 women's footwear or the stockroom, back of the

12 house.

13 Q. Are there any others that you can

Total Number of Clips:55
Total Number of Segments:55
Total Running Time:00:20:05.705

14 think of?

15 A. Like currently today?

16 Q. In the 2015 to 2017 time frame?

17 A. You could be a mobile cashier as well

18 where you would ring up end zone.

19 Q. What is end zone?

20 A. Like on the sales floor, not at your

21 traditional register.



HALL_048-22_48-24_D (Running 00:00:09.610)

1. Page 48:22 to 48:24 (Running 00:00:09.610)

22 Q. And would those mobile cashiers use

23 the Nike.com Assist mobile devices?

24 A. Yes.



HALL_050-09_50-14_D (Running 00:00:25.120)

1. Page 50:09 to 50:14 (Running 00:00:25.120)

09 Q. Okay. So you worked the Philadelphia

10 Premium Outlets during this time period; correct?

11 A. During 2015 to 2018?

12 Q. Correct.

13 A. I worked there 2015 to 2016. I don't

14 remember the exact date.



HALL_052-06_52-11_D (Running 00:00:21.750)

1. Page 52:06 to 52:11 (Running 00:00:21.750)

06 Q. Does a majority of time of full-time

07 associates consist of working in their department of

08 focus?

Total Number of Clips:55
Total Number of Segments:55
Total Running Time:00:20:05.705

09 A. What's a majority?

10 Q. Over 50 percent?

11 A. Yeah.



HALL_053-02_53-07_CD (Running 00:00:15.520)

1. Page 53:02 to 53:07 (Running 00:00:15.520)

02 Q. So how many products does a typical

03 Nike Factory Store carry at any given time?

04 A. Thousands.

05 Q. And are athletes expected to know

06 about every single product?

07 A. No.



HALL_054-01_54-02_D (Running 00:00:05.050)

1. Page 54:01 to 54:02 (Running 00:00:05.050)

01 Q. Is it a culture that encourages

02 associates to know their products well?



HALL_054-04_54-05_D (Running 00:00:03.880)

1. Page 54:04 to 54:05 (Running 00:00:03.880)

04 A. Yeah, we're very passionate about our

05 product.



HALL_054-09_54-20_D (Running 00:00:53.060)

1. Page 54:09 to 54:20 (Running 00:00:53.060)

09 Q. So with thousands of products at any

10 given store, how is it that a retail athlete wanting

11 to know more about a product can do so?

12 A. Similar to what I explained before.

13 You have text sheets. You have -- you have your

Total Number of Clips:55
Total Number of Segments:55
Total Running Time:00:20:05.705

14 leadership team who's been trained. You have Nike
15 SKU. You ask fellow employees that have worked
16 there a while who may have a better understanding of
17 products.
18 Q. What about Nike.com Assist?
19 A. Yes, you can utilize the Assist app
20 to look up product.



HALL_054-21_54-22_D (Running 00:00:07.400)

1. Page 54:21 to 54:22 (Running 00:00:07.400)

21 Q. And are athletes encouraged in their
22 downtime to spend that time learning about products?



HALL_054-25_55-04_D (Running 00:00:15.110)

1. Page 54:25 to 55:04 (Running 00:00:15.110)

25 A. We're all about learning and
01 education. So it's -- yeah, there is not a lot of
02 downtime at Nike. We're busy all the time, but if
03 there happens to be, we're all about giving our
04 employees an opportunity to learn more.



HALL_057-15_57-17_D (Running 00:00:09.290)

1. Page 57:15 to 57:17 (Running 00:00:09.290)

15 Q. And were -- those text sheets, did
16 they include a product title at the top?
17 A. Yes.




HALL_057-18_57-19_D (Running 00:00:05.510)

1. Page 57:18 to 57:19 (Running 00:00:05.510)


18 Q. And why did they include a product

Total Number of Clips:55
Total Number of Segments:55
Total Running Time:00:20:05.705

 HALL_057-22_57-23_D (Running 00:00:08.510)


1. Page 57:22 to 57:23 (Running 00:00:08.510)

22 A. Our products have names and then also
23 descriptions of what the product is in the title.

 HALL_057-24_58-01_D (Running 00:00:14.000)


1. Page 57:24 to 58:01 (Running 00:00:14.000)

24 Q. So why is it important for the text
25 sheets provided to retail athletes to have a title
01 at the top of the text sheet?

 HALL_058-04_58-05_D (Running 00:00:06.510)


1. Page 58:04 to 58:05 (Running 00:00:06.510)

04 A. Yeah, to be able to explain the name
05 and then also a description of that product.

 HALL_058-06_58-07_D (Running 00:00:03.310)


1. Page 58:06 to 58:07 (Running 00:00:03.310)

06 Q. Explain to the customers when they
07 spoke with them about the product?

 HALL_058-10_58-11_D (Running 00:00:07.470)

1. Page 58:10 to 58:11 (Running 00:00:07.470)

10 A. Yeah, ultimately, the text sheets are
11 to help our athletes service the consumer.

 HALL_063-22_63-25_D (Running 00:00:14.540)

1. Page 63:22 to 63:25 (Running 00:00:14.540)

22 Q. Mr. Hall, do you have what is titled
23 exhibit 26?

Total Number of Clips:55
Total Number of Segments:55
Total Running Time:00:20:05.705

24 A. Yes, I can see it on the screen

25 share. I also downloaded it.



HALL_064-01_64-04_D (Running 00:00:16.360)

1. Page 64:01 to 64:04 (Running 00:00:16.360)

01 Q. So this is a document titled: Nike

02 Retail Mobile Point of Sale, and at the top shows a

03 phone with Nike.com Assist.

04 Do you see that?



HALL_064-18_65-03_D (Running 00:00:52.270)

1. Page 64:18 to 65:03 (Running 00:00:52.270)

18 A. Yes.

19 Q. So I'm showing you a portion of

20 exhibit 26 that has three screens under log in. It

21 shows a Nike.com Assist main screen. Is that how

22 the main screen for Nike.com Assist looks or looked?

23 A. Yes, that's how it looked.

24 Q. And then the next picture shows a

25 sign-in button with a place to enter employee ID and

01 password. Is that also an accurate depiction of how

02 Nike.com Assist looked?

03 A. Yes.



HALL_067-21_68-12_D (Running 00:01:09.920)

1. Page 67:21 to 68:12 (Running 00:01:09.920)

21 Q. So the best way to access product

22 information is to scan the bar code for the product

23 that you want information on; correct?

Total Number of Clips:55
Total Number of Segments:55
Total Running Time:00:20:05.705

24 A. Correct.

25 Q. And then this next portion of exhibit

01 26 is labeled: Product detail, and it has three

02 screen captures of the mobile device. Is this an

03 accurate representation of the product detail pages

04 that would be pulled up when you scanned a bar code

05 of a product?

06 A. Yes.

07 Q. So in the first image, this

08 particular image is of something called the: Nike

09 Dri-Knit long-sleeve women's running shirt, product

10 number 599205-403.

11 Do you see that?

12 A. Yes.



HALL_068-13_68-17_D (Running 00:00:17.480)

1. Page 68:13 to 68:17 (Running 00:00:17.480)

13 Q. So is that the portion of the screen,

14 on the first screen when you scan a product, that

15 would show the name of the products to the retail

16 athlete?

17 A. Yes.



HALL_068-18_68-20_D (Running 00:00:09.280)

1. Page 68:18 to 68:20 (Running 00:00:09.280)

18 Q. And it would have the price next to

19 it?

20 A. Yes.

1. Page 70:08 to 71:10 (Running 00:01:39.430)

08 So you see in the second screen here,
09 on the product detail, that there are some sizing
10 options, some color options and some areas labeled
11 benefits and technology and reviews. Is that format
12 what you recall Nike.com Assist looking like if you
13 swiped left to the next screen -- or strike that.

14 How do you get to this second screen?

15 A. So that second screen is -- so you
16 would scroll down or like swipe up, that's below
17 what's on that first picture, so you have the colors
18 of the items and then you have the sizes based off
19 of color, but you're still on the same page. You're
20 just -- you scroll down now.

21 Q. I see.

22 So all three of these pictures would
23 just be scrolling down to further down parts of the
24 product detail page?

25 A. No.

01 Q. What portion of these three images
02 would not be accessed through scrolling down?

03 A. That third one, the reviews just
04 doesn't pop up. You would have to click on that
05 little area.

06 Q. So is that the same for benefits and

Total Number of Clips:55
Total Number of Segments:55
Total Running Time:00:20:05.705

07 technology, you would have to tap that area for the

08 benefits and technology to populate before the

09 title?

10 A. That's correct.



HALL_074-14_74-23_D (Running 00:00:32.620)

1. Page 74:14 to 74:23 (Running 00:00:32.620)

14 Q. Did retail athletes use Nike.com

15 itself to learn about products?

16 A. It's an option for them.

17 Q. How often did you refer to Nike.com

18 while you were working at Philadelphia Premium

19 Outlets Nike Factory Store?

20 A. I look at Nike.com daily.

21 Q. And did you encourage other retail

22 associates to look at it frequently as well?

23 A. Yes.



HALL_075-01_75-12_D (Running 00:00:38.880)

1. Page 75:01 to 75:12 (Running 00:00:38.880)

01 What did you encourage them to look

02 at it for?

03 A. To understand product. Also, there

04 is a connection between Nike employees that we all

05 love the product. So it's a discussion piece of

06 just being able to talk about what just dropped

07 online.

08 Q. Did you encourage them to use

09 Nike.com to educate themselves about the products

10 available in your stores?

11 A. It's one of the many options that I

12 listed, so yes.



HALL_075-19_76-03_D (Running 00:00:48.450)

1. Page 75:19 to 76:03 (Running 00:00:48.450)

19 Q. Did you personally observe any retail

20 athletes or coaches at the Philadelphia Premium

21 Outlet Nike Factory Store using the SKU interface?

22 A. Yes.

23 Q. How frequently did you observe the

24 SKU interface being used by retail associates?

25 A. Depends on the retail athlete. You

01 have some that are extremely passionate, who ask for

02 time to spend on SKU, and then you have some that

03 would never log on to SKU.



HALL_077-01_77-06_D (Running 00:00:24.260)

1. Page 77:01 to 77:06 (Running 00:00:24.260)

01 If a retail associate wants to access

02 SKU in store, where do they access it on?

03 A. There is a computer in the break room

04 that they can access. We have computers in the

05 office and they also can access SKU from their

06 personal cell phone or personal computer.



HALL_079-03_79-11_CD (Running 00:00:26.850)

1. Page 79:03 to 79:11 (Running 00:00:26.850)

Total Number of Clips:55
Total Number of Segments:55
Total Running Time:00:20:05.705

03 Do you know if Nike Factory Stores

04 during this time period had stationary screens that

05 could be accessed by customers through which

06 Nike.com Assist was available?

07 A. No.

08 Q. You don't know one way or another or

09 they weren't available?

10 A. No, there was not Nike.com Assist

11 available to the consumers.



HALL_080-20_80-22_D (Running 00:00:06.730)

1. Page 80:20 to 80:22 (Running 00:00:06.730)

20 Q. What are brand stations with a

21 computer?

22 A. You can access Nike.com.



HALL_080-23_81-01_CD (Running 00:00:09.400)

1. Page 80:23 to 81:01 (Running 00:00:09.400)

23 Q. And does every Nike Factory Store in

24 the 2015 to 2017 time frame have one of these brand

25 stations?

01 A. No.



HALL_083-19_84-02_D (Running 00:00:25.640)

1. Page 83:19 to 84:02 (Running 00:00:25.640)

19 What else was the brand station there

20 for?

21 A. Nike.com.

22 Q. And how would you access Nike.com at

Total Number of Clips:55
Total Number of Segments:55
Total Running Time:00:20:05.705

23 this brand station?

24 A. That's the only screen available.

25 Q. So that's the default screen,

01 Nike.com?

02 A. Correct.



HALL_084-12_84-24_D (Running 00:00:41.150)

1. Page 84:12 to 84:24 (Running 00:00:41.150)

12 Q. Were you able to search or scroll

13 through to a product page to learn about a product?

14 A. Yeah, you could search for a product.

15 Q. So if you had a product in your hand,

16 flipped it to where the product number was and you

17 put -- there was a search bar to put in that product

18 number and pull up a product page; correct?

19 A. If that product is available on

20 Nike.com.

21 Q. It would pull it up on the brand

22 station in that way?

23 A. If it was available to purchase on

24 Nike.com.



HALL_189-15_190-12_CD (Running 00:01:03.029)

1. Page 189:15 to 190:12 (Running 00:01:03.029)

15 Q. Mr. Hall, what is your current role

16 at Nike?

17 A. I am head coach of the Lancaster

18 Factory Store.

19 Q. And what is the head coach's

20 responsibility?

21 A. I am the store manager. I oversee my

22 leadership team, so a management team of currently

23 six, have two open roles, and ensure that training,

24 the day-to-day operations are conducted and held by

25 my leadership team, and that we show up the right

01 way for our consumers.

02 Q. How long have you had that position

03 for as head coach?

04 A. Been head coach now for a little over

05 a year.

06 Q. All right. When did you start your

07 career at Nike?

08 A. October 2008.

09 Q. Wow, okay. So can you give us a

10 little overview of what your career path has been

11 since 2008 that has led you to head coach?

12 A. Sure.



HALL_190-16_191-14_CD (Running 00:01:35.890)

1. Page 190:16 to 191:14 (Running 00:01:35.890).

16 A. Yeah, I started as a seasonal athlete

17 at Nike Town New York and went from a seasonal, to a

18 part-time, to full-time, to a lead, to a coach over

19 my three years at Nike Town.

20 I then got promoted to assistant head

Total Number of Clips:55

Total Number of Segments:55

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21 coach out in Oregon in Lincoln City on the factory
 22 side of business. Spent about a year at Lincoln
 23 City as an assistant head coach, and then I took a
 24 step down to be a coach at the Woodburn Factory
 25 Store. It's a big pilot door and located about 30
 01 minutes from our world headquarters. Spent about a
 02 year at Woodburn where ultimately I missed the east
 03 coast of being close to my friends and family, where
 04 I moved to Pottstown as an assistant head coach.
 05 I also stretched as head coach during
 06 my three plus years at Pottstown, where then the
 07 Ekin role came to Nike Direct. So I thought that
 08 was a big opportunity around product training and
 09 history and heritage for our factory side of the
 10 business. So I was very excited to take on that
 11 role and kind of pilot that role for the company,
 12 where I've spent close to three years as a Nike
 13 Direct Ekin or a DTC Ekin originally before taking
 14 on the head coach role.



HALL_194-15_194-25_CD (Running 00:00:34.440)

1. Page 194:15 to 194:25 (Running 00:00:34.440).

15 How many Nike stores have you been a
 16 part of during your employment at Nike?
 17 A. So I've been a leader, a manager at
 18 five stores. Been a part of multiple districts, and
 19 as an Ekin, I was a partner to anywhere from nine to

Total Number of Clips:55
 Total Number of Segments:55
 Total Running Time:00:20:05.705

20 16 stores at a time. So 20 plus.

21 Q. Great.

22 And so you've worked on the sales

23 floor of Nike stores interacting with consumers;

24 right?

25 A. That's correct.



HALL_196-11_196-14_CD (Running 00:00:10.030)

1. Page 196:11 to 196:14 (Running 00:00:10.030)

11 How many different Nike retail stores

12 do you think you've visited over the course of your

13 adult life?

14 A. Oh, probably another 20.



HALL_200-23_201-03 (Running 00:00:14.050)

1. Page 200:23 to 201:03 (Running 00:00:14.050)

23 Q. And do consumers ever receive text

24 sheets?

25 A. No. No, they're an internal document

01 there for education of our team. They're not to be



02 shared with consumers. It's to help us service the

03 consumer.


Total Number of Clips:55
Total Number of Segments:55
Total Running Time:00:20:05.705

Case Clips Detailed Report


10290_Lontex v Nike

 **JOHNSON, NICHOLAS - VOL 1 - 11/21/2019 120 Clips (Running 00:50:05.295)** **JOHNSON_007-01_07-03_D (Running 00:00:04.011)****1. Page 07:01 to 07:03 (Running 00:00:04.011)**


- 01 Q. Good morning. Can you state your name for
- 02 the record.
- 03 A. Nicholas Johnson.

 **JOHNSON_017-22_18-04_CD (Running 00:00:45.460)****1. Page 17:22 to 18:04 (Running 00:00:45.460)**

- 22 So with that, what is your current role at Nike?
- 23 A. My current role at Nike is senior project
- 24 manager for Nike apparel innovation.
- 25 Q. What is Nike apparel and innovation within
- 01 the Nike structure?
- 02 A. The -- within the Nike structure, the Nike
- 03 apparel innovation group works on creating new
- 04 future products and apparel.

 **JOHNSON_018-11_18-14_CD (Running 00:00:11.530)****1. Page 18:11 to 18:14 (Running 00:00:11.530)**

- 11 Q. So would that include Nike Pro apparel?
- 12 A. Potentially, if we came up with an
- 13 innovation that was -- could be attributed to that
- 14 line, yes.

 **JOHNSON_019-04_19-14_CD (Running 00:00:32.401)****1. Page 19:04 to 19:14 (Running 00:00:32.401)**

Total Number of Clips:120

Total Number of Segments:120

Total Running Time:00:50:05.295

04 Q. Okay. So then how long have you been in

05 that position? From what date to the present?

06 A. Since August 1st, 2017.

07 Q. And prior to assuming that position, what

08 was your position within Nike?

09 A. Prior to that position, my position within

10 Nike was as the Product Line Manager for Nike Pro.

11 As a Product Line Manager for Nike Pro.

12 Q. How many Product Line Managers were there

13 with you for Nike Pro at that time you served in

14 that capacity?



JOHNSON_019-16_19-18_CD (Running 00:00:14.869)

1. Page 19:16 to 19:18 (Running 00:00:14.869)

16 THE WITNESS: During my time as a Product

17 Line Manager for Nike Pro, there were multiple other

18 Product Line Managers.



JOHNSON_021-15_21-22_D (Running 00:00:23.561)

1. Page 21:15 to 21:22 (Running 00:00:23.561)

15 Q. Was there part of the product line known

16 as "Cool" during that time frame?

17 A. There was a product line that we referred

18 to as Nike Pro Cool. The time -- the time frame --

19 during that time frame, yeah.


20 Q. Was that also within your product line

21 management?

22 A. Yes.


1. Page 21:23 to 22:05 (Running 00:00:28.409)

- 23 Q. And was there a Nike Pro Warm during that
24 time frame, as well?
25 A. For a portion of that time frame, yes.
01 Q. What portion of that time frame?
02 A. We had the product that was referred to as
03 Nike Pro Warm during the entirety of that time frame
04 with different -- we referenced it with different
05 naming conventions.

 JOHNSON_031-23_32-09_CD (Running 00:00:39.300)

1. Page 31:23 to 32:09 (Running 00:00:39.300)

- 23 Q. So prior to that time, what role did you
24 serve in for Nike?
25 A. Prior to my role as a Product Line Manager
01 at Nike Pro, I was an associate Product Line Manager
02 for Nike Pro.
03 Q. And what -- was that from September 2013
04 to December of 2015, approximately?
05 A. Correct.
06 Q. And during that time, how many -- how many
07 associate Product Line Managers served within the
08 Nike Pro product line alongside of you?
09 A. I was the only one.

 JOHNSON_034-19_35-22_CD (Running 00:01:47.450)

1. Page 34:19 to 35:22 (Running 00:01:47.450)

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

19 Q. So do you view the Nike Pro product line

20 management as divided within seasons?

21 A. We use seasons -- we use seasons to help

22 guide our work that we're doing and prioritization.

23 Q. And in a particular season, for example,

24 quarter one of 2015, are you mainly working on that

25 season, or are you working on a season in the

01 future?

02 A. Quarter one is not a season.

03 Q. What are the seasons?

04 A. For us fall, holiday, spring and summer.

05 Q. And the year that is ascribed to that

06 season, is that the calendar year that it falls

07 within?

08 A. The calendar year in which that product

09 would be in market.

10 Q. So for holiday, is it given a two-year

11 designation since it spills over from one year to

12 the next?

13 A. No.

14 Q. Is it the earlier year that is designated

15 as the year?

16 A. Holiday doesn't spill over from one year

17 to the next.

18 Q. What period does fall cover?

19 A. Fall covers -- fall covers July, September


Total Number of Clips:120

Total Number of Segments:120

Total Running Time:00:50:05.295

21 Q. And what period does holiday cover?

22 A. October, November, December.

 **JOHNSON_038-11_38-22_CD** (Running 00:00:41.290)

1. Page 38:11 to 38:22 (Running 00:00:41.290)

11 Q. And did you work at Nike prior to

12 September 2013?

13 A. Yes.

14 Q. Where were you within Nike? Strike that.

15 What was your role?

16 A. Prior to my role as an Associate Line

17 Manager for Nike Pro, I was a social media


18 specialist.

19 Q. And what period of time was that for?

20 A. I was a social media specialist from April


21 of 2012 until I took the work as the Associate

22 Product Line Manager in Nike Pro.

 **JOHNSON_048-06_CD** (Running 00:00:03.819)

1. Page 48:06 to 48:06 (Running 00:00:03.819)

06 Q. How would you refer to Nike Pro Cool?

 **JOHNSON_048-08_48-11_CD** (Running 00:00:16.761)

1. Page 48:08 to 48:11 (Running 00:00:16.761)

08 THE WITNESS: I refer to Nike Pro Cool as

09 a -- as a collection of -- you know, a segment of

10 our product line is a collection within our product

11 line.

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295



1. Page 48:13 to 49:22 (Running 00:01:54.580)

13 Q. And is there something within Nike called

14 a silhouette?

15 A. Yes.

16 Q. What is a silhouette?

17 A. A silhouette, in general, would refer to

18 the -- depending on -- so depending on where you

19 work in the business of product creation, silhouette

20 would mean different things to you. In general,

21 within Nike, a silhouette would reference, you know,

22 a T-shirt or a long-sleeved shirt or a long-sleeved

23 shirt with a mock neck or a crew neck or a hoodie.

24 The pants, short -- it might have the reference to

25 certain lengths, depending on how you use it.

01 Q. And each of those are examples of

02 silhouette, as generally understood?

03 A. Each of those are examples of -- it's not

04 an exhaustive list, but each of those are examples

05 of silhouette.

06 Q. Is a silo something different?

07 A. A silo can be used to reference a grouping

08 of multiple collections of product within a product

09 line or even within the business.

10 Q. Within Nike Pro, during your tenure, were

11 there any silos?

Total Number of Clips:120

Total Number of Segments:120

Total Running Time:00:50:05.295

12 A. Yes.

13 Q. What were those silos?

14 A. During my time in Nike Pro, there were

15 multiple silos referred to in multiple ways. The

16 primary silos that we worked with were Cool, Warm,

17 Recovery, depending on the time frame, and then we

18 also had a silo that we referenced as

19 hypercompression --

20 THE REPORTER: As what compression?

21 THE WITNESS: Hypercompression. During --

22 for a period of time.



JOHNSON_050-04_50-12_D (Running 00:00:40.390)

1. Page 50:04 to 50:12 (Running 00:00:40.390)

04 So did a shift take place within 2014 to

05 move from something known as the Core silo to a Cool

06 silo?

07 A. I wouldn't use "silo" in that language.

08 Q. How would you describe it?

09 A. We had a product group or collection

10 within our line that was referred to as -- that was

11 called Nike Pro Core and that changed to Nike Pro

12 Cool.



JOHNSON_050-21_50-25_D (Running 00:00:27.359)

1. Page 50:21 to 50:25 (Running 00:00:27.359)

21 Q. When did the

22 idea of changing from Core to Cool first come about,

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

23 general time frame?

24 A. General time frame would probably -- would

25 be in the -- 2014. In 2014.



JOHNSON_051-13_51-20_D (Running 00:00:30.801)

1. Page 51:13 to 51:20 (Running 00:00:30.801)

13 Q. Let me ask this way: In what season did

14 the product grouping from Core get replaced with

15 Cool?

16 A. In market?

17 Q. Yes.

18 A. The product grouping known as Nike Pro

19 Core was changed to Nike Pro Cool in the summer of

20 2015.



JOHNSON_053-22_54-01_D (Running 00:00:21.590)

1. Page 53:22 to 54:01 (Running 00:00:21.590)

22 Q. And then I understand, or am I correct in

23 understanding, that sometime in 2016, there was a

24 push within Nike Pro to remove "Cool" or the terms

25 together, "Cool" and "Compression", out of the style

01 names?



JOHNSON_054-03_54-10_D (Running 00:00:28.000)

1. Page 54:03 to 54:10 (Running 00:00:28.000)

03 THE WITNESS: During the time frame of


04 2016?

05 BY MR. WAGNER:

06 Q. Yes.


Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

07 A. There was a -- I wouldn't use the word
08 "push." There was a request for us to modify the
09 way in which the words like "Cool" and the word
10 "Compression" were showing up.

 JOHNSON_054-11_54-20_D (Running 00:00:37.851)


1. Page 54:11 to 54:20 (Running 00:00:37.851)

11 Q. "Showing up". What do you mean by
12 "showing up"?
13 A. So for us, Nike Pro Cool is a part of our
14 product line that conveys a benefit to the consumer
15 of keeping them cooler, keeping them cool.
16 "Compression" is something that we use as a fit.
17 Often, Nike Pro Cool, with a descriptor for the fit
18 of compression would show up next to each other, so
19 we were informed that we were needing to separate
20 those words from each other.

 JOHNSON_054-21_54-22_D (Running 00:00:04.210)

1. Page 54:21 to 54:22 (Running 00:00:04.210)

21 Q. In the style statement name or somewhere
22 else?

 JOHNSON_054-24_55-04_D (Running 00:00:20.911)

1. Page 54:24 to 55:04 (Running 00:00:20.911)

24 THE WITNESS: In general -- in general
25 use. My understanding was that consumer facing --
01 we could not have those words. We were -- we were
02 trying not to have those words next to each other as

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

03 a way of complying, based off of direction from

04 legal.



JOHNSON_056-17_57-02_D (Running 00:00:41.841)

1. Page 56:17 to 57:02 (Running 00:00:41.841)

17 Q. Sure. Was the need to change the name

18 specific to the U.S., or was it a global change?

19 A. As a Product Line Manager for Nike Pro, I

20 operate in a global capacity, so as -- I didn't have

21 an understanding if there is a specific designation

22 of a -- as a geography of which the change needed to

23 happen.

24 Q. And did you receive the directive to

25 participate in the changing of how "Cool" and

01 "Compression" appeared together in the Nike Pro

02 product line?



JOHNSON_057-05_57-15_D (Running 00:00:27.300)

1. Page 57:05 to 57:15 (Running 00:00:27.300)

05 THE WITNESS: As the Nike Pro -- as a

06 Product Line Manager of Nike Pro, one of my roles

07 and responsibilities would be to help to comply with

08 our direction from Legal in what steps needed to be

09 taken.

10 BY MR. WAGNER:

11 Q. And did you see that as an optional

12 directive, or was that a mandatory change that you

13 had to implement?

Total Number of Clips:120

Total Number of Segments:120

Total Running Time:00:50:05.295

14 A. I don't -- I don't see things from Legal

15 as optional.



JOHNSON_058-23_59-02_CD (Running 00:00:16.200)

1. Page 58:23 to 59:02 (Running 00:00:16.200)

23 Did you take any steps to change how

24 "Cool" was used within catalogs to refer to certain

25 Nike Pro products?

01 A. We did not take any steps to change how

02 "Cool" was used within Nike Pro catalogs.



JOHNSON_059-05_59-07_CD (Running 00:00:06.961)

1. Page 59:05 to 59:07 (Running 00:00:06.961)

05 Why not?

06 A. There was no directive to change the word.

07 "Cool".



JOHNSON_065-21_66-02_D (Running 00:00:36.580)

1. Page 65:21 to 66:02 (Running 00:00:36.580)

21 Q. What materials prepared

22 to provide to retailers with respect to Nike Pro

23 products?

24 A. Typically, we'll create a tech sheet that

25 would describe about the product, and we would

01 provide other materials that showed our offering to

02 retailers.



JOHNSON_066-03_66-12_CD (Running 00:00:41.421)

1. Page 66:03 to 66:12 (Running 00:00:41.421)

03 Q. When you say other materials showing our

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

04 offerings, what do you have in your mind?

05 A. Assortment.

06 Q. Assortment of materials?

07 A. An assortment of product that is available

08 to be purchased by the retailer.

09 Q. Is this something other than a catalog?

10 A. There are other materials other than a

11 catalog that would be presented to a retailer

12 through the process.



JOHNSON_077-11_77-15_CD (Running 00:00:15.800)

1. Page 77:11 to 77:15 (Running 00:00:15.800)

11 Q. So is there someone that is responsible

12 for -- at Nike for communicating with retailers

13 about changes to product descriptions or product

14 style names that need to take place for Nike

15 products?



JOHNSON_077-17_77-22_CD (Running 00:00:18.000)

1. Page 77:17 to 77:22 (Running 00:00:18.000)

17 THE WITNESS: When we make changes, there

18 are people responsible for communicating our changes

19 to our partners. Our strategic partners, I believe,

20 would have a representative that when we make a

21 change, we will make sure that our change is

22 communicated.



JOHNSON_079-09_79-12_D (Running 00:00:13.110)

1. Page 79:09 to 79:12 (Running 00:00:13.110)

Total Number of Clips:120

Total Number of Segments:120

Total Running Time:00:50:05.295

09 THE WITNESS. In 2016, I communicated with

10 some of our key partners that it was necessary to

11 make adjustments to how some of the language was

12 showing up externally facing.



JOHNSON_081-08_81-21_CD (Running 00:00:35.170)

1. Page 81:08 to 81:21 (Running 00:00:35.170)

08 Q. Would it be okay if we call that the

09 naming change in 2016? I'm just trying to think of

10 something that doesn't always -- or, how would you

11 look to reference it so we don't always have to get

12 the exact wording the same?

13 A. I would not reference that as a naming

14 change.

15 Q. What would you reference it as?

16 A. I mean -- it was a -- we were -- we were

17 asked to make a -- we were asked to look at and make

18 a change, but it's not -- it was not part of

19 necessarily a naming change. The naming change is

20 something I refer to as Nike Pro Core becoming Nike

21 Pro Cool.



JOHNSON_088-01_88-10_D (Running 00:00:27.300)

1. Page 88:01 to 88:10 (Running 00:00:27.300)

01 Q. Okay. So Parker Mangum used to be the

02 Product Line Manager for Nike Pro above you for a

03 certain period of time; is that correct?

04 A. Parker Mangum was the Product Line Manager

Total Number of Clips:120

Total Number of Segments:120

Total Running Time:00:50:05.295

05 for Nike Pro for a period of time while I was the


06 APLM, but also for a period of time while I was a

07 PLM.

08 Q. So you both shared that title for at least


09 some period?

10 A. Yes.

 **JOHNSON_140-21_140-22_D** (Running 00:00:02.630)

1. Page 140:21 to 140:21 (Running 00:00:02.630).

21 Q. Did you receive training on ANAQUA?

 **JOHNSON_140-23_141-01_D** (Running 00:00:14.551)


1. Page 140:23 to 141:01 (Running 00:00:14.551).

23 THE WITNESS: I did not receive official,

24 like, in-depth training on ANAQUA. I was informed

25 of ANAQUA and shown ANAQUA by colleagues as a

01 Project Line Manager.

 **JOHNSON_141-03_141-06_CD** (Running 00:00:14.280)


1. Page 141:03 to 141:06 (Running 00:00:14.280).

03 Q. Was this a part of your -- the prep -- the

04 education of you when you became an Associate

05 Product Line Manager for Nike Pro?

06 A. Yes.

 **JOHNSON_141-17_141-19_D** (Running 00:00:04.950)

1. Page 141:17 to 141:19 (Running 00:00:04.950).

17 Q. Were you able to input information into


18 it?

19 A. I never used ANAQUA.

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295


1. Page 141:20 to 141:24 (Running 00:00:11.060)

- 20 Q. Do you know if any of your Product Line
21 Manager colleagues at Nike Pro ever used ANAQUA?
22 A. Yes.
23 Q. And did they?
24 A. Yes.

 JOHNSON_141-25_142-03_D (Running 00:00:12.470)


1. Page 141:25 to 142:03 (Running 00:00:12.470)

- 25 Q. Who, during your tenure, entered
01 information into ANAQUA from the Nike Pro product
02 line management group?
03 A. To my knowledge, Parker Mangum.

 JOHNSON_142-07_142-08_D (Running 00:00:07.419)

1. Page 142:07 to 142:08 (Running 00:00:07.419)

- 07 Q. Who entered information into ANAQUA once
08 Parker Mangum left Nike Pro?

 JOHNSON_142-10_142-17_D (Running 00:00:47.571)

1. Page 142:10 to 142:17 (Running 00:00:47.571)

- 10 THE WITNESS: The way it works is when we
11 update product only on certain cadence, during my
12 tenure at Nike Pro, after Parker's departure, there
13 was not anything that we thought was necessary for
14 us to enter into ANAQUA. Can I clarify? When I
15 said, "we," I was referring to the Nike Pro product
16 management team.

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295



JOHNSON_142-18_142-22_D (Running 00:00:16.559)

1. Page 142:18 to 142:22 (Running 00:00:16.559).

18 Q. Thank you for that clarification. And
19 when did Parker Mangum leave the Nike Pro team?
20 A. I don't know the specific date, but I
21 believe and have been referring to the March/April
22 time frame of 2016.



JOHNSON_142-23_143-02_D (Running 00:00:23.490)

1. Page 142:23 to 143:02 (Running 00:00:23.490).

23 Q. So from the March/April 2017 time frame
24 until you left the Nike Pro team in late 2017, no
25 information was entered into ANAQUA by anyone in the
01 Nike Pro product line management team; is that
02 correct?



JOHNSON_143-04_143-07_D (Running 00:00:11.860)

1. Page 143:04 to 143:07 (Running 00:00:11.860).

04 THE WITNESS: To the knowledge that I have
05 -- I'm not aware of everything the other PLMs may
06 have done, but to my knowledge, I did not put
07 anything into ANAQUA during that time frame.



JOHNSON_144-18_144-22_D (Running 00:00:24.989)

1. Page 144:18 to 144:22 (Running 00:00:24.989).

18 Q. Do you know if anyone else outside of Nike
19 Pro entered information into ANAQUA for Nike Pro
20 numbers during the 2014 to 2018 time frame?

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

21 A. I cannot speak definitively around whether

22 people did or did not.



JOHNSON_145-07_145-13_D (Running 00:00:18.150)

1. Page 145:07 to 145:13 (Running 00:00:18.150).

07 Q. Did you ask anyone if they did?

08 A. Yes.

09 Q. Who did you ask?

10 A. Parker Mangum.

11 Q. And he said he did?

12 A. Parker Mangum has entered things into

13 ANAQUA during that time frame.



JOHNSON_150-05_150-10_D (Running 00:00:13.819)

1. Page 150:05 to 150:10 (Running 00:00:13.819).

05 Q. What did he indicate with respect to the

06 term "Cool"?

07 A. That he had not entered "Cool Compression"

08 into ANAQUA because that wouldn't make sense given

09 that fact that compression is a fit and we don't put

10 fit and silhouette into ANAQUA.



JOHNSON_150-17_150-24_D (Running 00:00:29.381)

1. Page 150:17 to 150:24 (Running 00:00:29.381).

17 Do you know if Parker Mangum entered the

18 term "Cool" with respect to any Nike Pro products in

19 the year 2014?

20 A. Given the work happening during the time

21 frame and the conversations we were having around

Total Number of Clips:120

Total Number of Segments:120

Total Running Time:00:50:05.295

22 the change from Nike Pro Core to Nike Pro Cool, my

23 understanding is that he did. My belief is that he

24 did.



JOHNSON_152-23_153-05_D (Running 00:00:25.660)

1. Page 152:23 to 153:05 (Running 00:00:25.660)

23 Q. Is someone on the business side of Nike

24 responsible for reviewing the results that come

25 back?

01 A. I would imagine, yes. Yes, I believe that

02 the -- someone on -- the Product Line Manager who

03 entered the search query would, I believe, be

04 responsible for reading through whatever the result

05 was.



JOHNSON_158-16_158-22_D (Running 00:00:16.360)

1. Page 158:16 to 158:22 (Running 00:00:16.360)

16 Q. So when did Nike first become aware of

17 Lontex?

18 A. To my understanding, it was when the

19 letter was sent to Nike from a representative for

20 Lontex.

21 Q. Is that about April 2016?

22 A. That is my understanding.



JOHNSON_166-18_167-06_D (Running 00:00:45.230)


1. Page 166:18 to 167:06 (Running 00:00:45.230)

18 Q. So what was the core refresh in 2014 in

19 Nike Pro?

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

20 A. We've discussed that previously. We
21 looked at -- we had a product -- part of our product
22 line known as Nike Pro Core and we updated in 2014,
23 we were discussing when that product would be new in
24 the market again, first season summer '15 of what we
25 should call it and we decided to call it Nike Pro
01 Cool.
02 Q. And who was involved in that discussion?
03 A. It was a group decision with
04 representatives from different functions that I've
05 referenced earlier, mostly brand and the Nike Pro
06 product management team.

 **JOHNSON_169-04_170-13_CD** (Running 00:02:10.761)

1. Page 169:04 to 170:13 (Running 00:02:10.761)

04 Q. In those discussions, what reasons were
05 given for why "Cool" would be a good name to use?
06 A. Prior to having it be a specific product
07 name, we've talked about cooling as a benefit or
08 cool as a benefit for consumers. A lot of the
09 products we do, it's about moisture management and
10 wicking moisture off the body and spread it and
11 disperse around the materials so it can evaporate
12 better, which leads to a cooling enablement for the
13 athlete. So it's been used prior, commonly
14 discussing parts of our line.
15 Q. Were there any other reasons why the team

Total Number of Clips:120
Total Number of Segments:120
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16 or portions of the team felt that using the term

17 "Cool" would be good?

18 A. Yeah. So a lot of our products as they

19 went out to market were really complex in the

20 naming. So you would have long names with lots of

21 the different things around them, starting with Nike

22 Pro Combat -- that's extra language -- and then you

23 have the fit and the silhouette and all those things

24 in there.

25 So for simplicity, we were trying to

01 figure out how to communicate concisely what the

02 intent of use of the product would be for the

03 consumer. So as we talked about Cool-type products

04 and Warm-type products, the idea of just simplifying

05 it, calling it "Cool", made sense.

06 Q. Were there any other reasons that you can

07 recall that were discussed about why it would be

08 good to use the term "Cool"?

09 A. I think -- not -- kind of what I meant to

10 say in there, I don't know if it was clear. I'll

11 say it a little bit differently, too, is -- "Cool"

12 was intuitive to the consumer about what the product

13 proposition might be for them.



JOHNSON_171-16_171-19_D (Running 00:00:22.249)

1. Page 171:16 to 171:19 (Running 00:00:22.249).

16 Q. So out of all those people, do you know

Total Number of Clips:120

Total Number of Segments:120

Total Running Time:00:50:05.295

17 who had responsibility for making sure that Nike was

18 not impinging on any third-party rights in adopting

19 the term "Cool"?



JOHNSON_171-21_172-03_D (Running 00:00:23.040)

1. Page 171:21 to 172:03 (Running 00:00:23.040)

21 THE WITNESS: In the decision to make a

22 product called Nike Pro Cool and as the name -- that

23 would fall to the Product Line Manager to confirm if

24 that was available or appropriate. I don't know

25 what the right language is there.

01 BY MR. WAGNER:

02 Q. And that was Parker Mangum?

03 A. At the time, it was Parker Mangum.



JOHNSON_184-11_184-15_D (Running 00:00:21.911)

1. Page 184:11 to 184:15 (Running 00:00:21.911)

11 Q. Yes. If you knew that a company in the

12 U.S. was selling compression products with the

13 registered -- with the term "Cool Compression",

14 would that have impacted the decision to put "Cool"

15 and "Compression" in a Nike Pro product name?



JOHNSON_184-17_184-25_D (Running 00:00:28.460)

1. Page 184:17 to 184:25 (Running 00:00:28.460)

17 THE WITNESS: It may have as far as the

18 final decision before we went consumer facing with

19 it. It may have been something that we would not


20 have proceeded with, but for me as a proposal of the

Total Number of Clips:120

Total Number of Segments:120


Total Running Time:00:50:05.295

21 idea, I wouldn't have thought there would be issues
22 there as I think of "Cool" as the product benefit
23 and "Compression" as the fit. And if said company
24 had that as their trademark, it sounds to me like
25 they're using it in a different way.

 **JOHNSON_185-14_185-15_D** (Running 00:00:02.671)


1. Page 185:14 to 185:15 (Running 00:00:02.671).

14 Q. I'm going to hand you what is being marked
15 as the next exhibit.

 **JOHNSON_185-22_185-25_D** (Running 00:00:15.010)

1. Page 185:22 to 185:25 (Running 00:00:15.010).

22 Q. These documents all have a draft watermark
23 on them. Are there or were there final documents
24 that look the same as this that were ultimately
25 published?

 **JOHNSON_186-02_186-25_D** (Running 00:01:21.270)

1. Page 186:02 to 186:25 (Running 00:01:21.270).

02 THE WITNESS: I can't speak specifically
03 for every document, but documents similar to this
04 would have been produced.
05 BY MR. WAGNER:
06 Q. With the "Nike Pro Cool Compression"
07 phrase at the top?
08 A. Yeah, they would have -- they would have
09 been produced probably with "Nike Pro Cool
10 Compression". It would have been produced with

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

11 Nike Pro Cool Compression sleeveless shirt", for
12 example, on there, yeah.
13 Q. So what are these documents used for by
14 Nike?
15 A. So these documents are tech sheets, and
16 tech sheets are used to educate people throughout --
17 throughout the process around some of the new --
18 some products -- new products. It shows some of the
19 product details.
20 Q. Are only new products -- strike that.
21 Are tech sheets made on every product at
22 some point in the Nike Pro line?
23 A. Tech sheets should be produced for the new
24 season of the product and then carried through as
25 the product states in the offering.



JOHNSON_187-01_187-14_D (Running 00:00:29.400)

1. Page 187:01 to 187:14 (Running 00:00:29.400).

01 Q. And where are these tech sheets made
02 available to people?
03 A. These tech sheets are made available
04 depending on where you were in the organization in
05 different places. Some of those places are SKU
06 Sports Knowledge Underground.
07 THE REPORTER: Are what?
08 THE WITNESS: SKU Sports Knowledge
09 Underground.

Total Number of Clips:120

Total Number of Segments:120

Total Running Time:00:50:05.295

10 THE REPORTER: Sports what?

11 THE WITNESS: Sports Knowledge

12 Underground.

13 THE REPORTER: Thank you.

14 THE WITNESS: And also on Nike.net.



JOHNSON_187-25_188-06_D (Running 00:00:20.730)

1. Page 187:25 to 188:06 (Running 00:00:20.730)

25 Q. What is Sports Knowledge Underground?

01 A. It's a space in which retail associates

02 can educate themselves about product.

03 Q. When you say "retail associates," do you

04 mean people that work for a retailer?

05 A. People that work retail, either at Nike or

06 for a retailer.



JOHNSON_191-21_192-05_D (Running 00:00:37.900)

1. Page 191:20 to 192:05 (Running 00:00:37.900)

20 Q. Did you ever speak with any of the retail

21 associates about their use of the tech sheets?

22 A. I have been to Nike Portland, and during

23 our time -- and other various Nike-owned retail, and

24 during our time visiting those stores on occasion,

25 we asked them if they accessed the sheets. That's

01 the depth of knowledge I have there.

02 Q. And what was the answers you received?

03 A. Usually, yes. And when I say, "the

04 sheets," I mean if they use tech sheets in general,

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

05 are they reading up on product.



JOHNSON_192-12_192-16_D (Running 00:00:11.470)

1. Page 192:12 to 192:16 (Running 00:00:11.470)

- 12 Q. And did they say whether or not the tech
13 sheets were helpful?
14 A. Yes.
15 Q. And were they helpful?
16 A. Generally, yes.



JOHNSON_193-22_194-09_D (Running 00:00:33.989)

1. Page 193:22 to 194:09 (Running 00:00:33.989)

- 22 Q. Do you know if it's the general practice
23 of Nike retailers to familiarize their retail
24 associates with the tech sheets they offer?
25 A. Yeah, seems reasonable.
01 Q. It is?
02 A. In general, it seems like it was -- as a
03 practice -- I mean, you want your retail associates
04 to be educated, there is a tool available for them
05 to educate themselves about the products. The most
06 general terms that I can use in my knowledge, I
07 would say, yes.
08 Q. You would expect them to use that?
09 A. Yeah, I would expect them to use that.



JOHNSON_194-22_195-02_CD (Running 00:00:14.010)

1. Page 194:22 to 195:02 (Running 00:00:14.010)

- 22 Q. And you say, "Stephanie, there is a

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

23 company-wide product naming convention reset that is

24 kicking off in FA-16."

25 Is that the policy change that we just

01 spoke about a little while ago?

02 A. The naming convention change, yes.



JOHNSON_197-20_197-21_D (Running 00:00:06.821)

1. Page 197:20 to 197:21 (Running 00:00:06.821).

20 Q. Please review this document and let me

21 know when you've familiarized yourself with it.



JOHNSON_197-24_198-08_D (Running 00:00:20.269)

1. Page 197:24 to 198:08 (Running 00:00:20.269).

24 Q. Have you seen this document before?

25 A. Yes.

01 Q. What is this document?

02 A. This document is the fall '16 performance

03 apparel naming and branding update provided by

04 global product or for global product and

05 merchandising --

06 THE REPORTER: Can you slow down a minute.

07 THE WITNESS: Yeah. It's the fall '16

08 performance apparel naming and branding update.



JOHNSON_199-24_200-19_CD (Running 00:01:02.851)

1. Page 199:24 to 200:19 (Running 00:01:02.851).

24 Q. So then I'd like you to turn to Page 15.

25 A. Marked --

01 Q. Marked on the bottom right.

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

02 A. Okay.

03 Q. It begins "the discussion of on-garment

04 branding and hangtags".

05 A. Uh-huh.

06 Q. What is on-garment branding?

07 A. On garment branding is the branding that

08 shows up on a garment.

09 Q. And what's your involvement in on-garment

10 branding for Nike Pro products during your tenure at

11 which you were at Nike Pro?

12 A. On-garment branding, it has to be

13 developed. So as part of any change, we have to

14 redevelop the on-garment branding items that go on

15 there. So in my role as a Product Line Manager, I

16 would be responsible for those updates being

17 executed and then being put onto the garments, being

18 ultimately put on the garments. I don't put them on

19 the garments.



JOHNSON_201-03_D (Running 00:00:10.762)

1. Page 201:03 to 201:03 (Running 00:00:10.762)

03 Q. And let's turn to Page 18. Looks like



JOHNSON_201-17_201-21_D (Running 00:00:14.439)

1. Page 201:17 to 201:21 (Running 00:00:14.439)

17 Q. So interior hangtag and exterior are all,

18 at a minimum, at least three places in which

19 branding can be put on a garment, correct?

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

20 A. They are three of the places that can be

21 put on a garment.



JOHNSON_202-20_203-04_D (Running 00:00:58.689)

1. Page 202:20 to 203:04 (Running 00:00:58.689).

20 Q. And then turning to Page 28, the document
21 begins discussing on-garment interior branding, and
22 at Page 30, specifically, it starts talking about
23 how to use hangtags and on-garment objectives. What,
24 at least from this point onward, was the objective
25 of using an interior branding?

01 A. Interior branding is used to convey fit
02 information and the Nike -- the Nike tech platform,
03 but also, yeah, the fit information and the Nike
04 tech platform.



JOHNSON_203-05_CD (Running 00:00:02.810)

1. Page 203:05 to 203:05 (Running 00:00:02.810).

05 Q. So when you say, "Nike tech platform," if



JOHNSON_204-13_204-15_D (Running 00:00:08.400)

1. Page 204:13 to 204:15 (Running 00:00:08.400).

13 Why put the Nike tech platform on the
14 inside label at all?
15 A. So the consumer knows what they're buying.



JOHNSON_204-20_205-02_CD (Running 00:00:23.710)

1. Page 204:20 to 205:02 (Running 00:00:23.710).

20 Is the consumer supposed to look at the
21 inside label before making a purchase decision, to

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

22 your knowledge?

23 A. They -- supposed to. I wouldn't say if

24 they are supposed to or not supposed to. It's not

25 necessarily mandated. The size is available on the

01 UPC, so they may look there first. I don't know how

02 they'd interact with the garment specifically.



JOHNSON_205-11_205-14_D (Running 00:00:12.079)

1. Page 205:11 to 205:14 (Running 00:00:12.079)

11 Q. Does Nike obtain an additional benefit to

12 putting its Nike tech platform on the inside label

13 as opposed to just putting it on a hangtag that's

14 taken off after the consumer purchases the product?



JOHNSON_205-16_205-22_D (Running 00:00:17.091)

1. Page 205:16 to 205:22 (Running 00:00:17.091)

16 THE WITNESS: We want the consumer to be

17 able to know which items they have.

18 BY MR. WAGNER:

19 Q. Do you mean down the road, when they are

20 wearing and they look at it, they can still see what

21 tech platform is being used in that garment?

22 A. Yes.



JOHNSON_206-06_206-12_CD (Running 00:00:20.129)

1. Page 206:06 to 206:12 (Running 00:00:20.129)

06 Q. Would you expect a Nike consumer to

07 continue to look at the inside label as the life

08 cycle goes on for the product or only at the initial

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

09 point of purchase?

10 A. In my words, I wouldn't expect them to

11 continue to look at the inside label once they've

12 had the product for a while.



JOHNSON_206-20_206-24_D (Running 00:00:20.031)

1. Page 206:20 to 206:24 (Running 00:00:20.031).

20 Q. Do you know of any sort of research that

21 Nike has done into consumer behavior with respect to

22 the inside labels? Let me clarify. In references

23 in terms of ongoing reference to the inside labels

24 by the consumer?



JOHNSON_207-01_207-05_D (Running 00:00:22.140)

1. Page 207:01 to 207:05 (Running 00:00:22.140).

01 THE WITNESS: Not necessarily with that

02 degree of specificity that was shared with us during

03 this time. The consumer typical interaction with

04 hangtags or branding and some preferences basically

05 saying consumers don't really read hangtags.



JOHNSON_215-09_215-13_D (Running 00:01:44.280)

1. Page 215:09 to 215:13 (Running 00:01:44.280).

09 Q. Take a moment to review this document

10 which has been Bates designated NIKE41501.

11 A. Thank you.

12 Q. Do you recognize this document?


13 A. Yes. And, for the record, I'd like to



JOHNSON_216-15_217-02_CD (Running 00:00:55.161)


Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

15 Q. When you say, "Hey, Bill, can you take a
16 look at the attached list of POs style-color for the
17 men's styles to ensure that the name in the system
18 has been updated to remove 'Cool' from the name."
19 What does "PO" stand for?
20 A. Product offering.
21 Q. So is product offering a style number?
22 A. It's a style and color.
23 Q. It says that -- it's asking that he ensure
24 that the name in the system has been updated. What
25 system were you referring to?
01 A. Given the context of the email and his
02 role, MMX.

 **JOHNSON_217-03_217-11_D (Running 00:00:38.038)**


1. Page 217:03 to 217:11 (Running 00:00:38.038)

03 Q. Do you recall if he actually took a look
04 at the attached list to ensure that the name in the
05 system was updated to remove "Cool" in the name?
06 A. I do not recall if he specifically did,
07 but knowing the context, the importance of it, and
08 the timeline and how well he performed at his job, I
09 would assume it was completed, and the fact that
10 there is not another email attachment beyond that or
11 a continuing chain.

 **JOHNSON_217-23_218-02_CD (Running 00:00:22.280)**


Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

23 Q. Do you know if the update being discussed
24 here had anything to do with Lontex's assertion of
25 rights in the phrase "Cool Compression"?
01 A. In this context, it was not related.
02 Q. Was it related to a European issue?

 **JOHNSON_218-07_CD (Running 00:00:02.510)**


1. Page 218:07 to 218:07 (Running 00:00:02.510).

07 THE WITNESS: Yes.

 **JOHNSON_223-16_223-24_D (Running 00:00:23.679)**

1. Page 223:16 to 223:24 (Running 00:00:23.679).

16 Q. But as of today, you don't recall one way
17 or another whether the women's counterpart to you
18 took care of a similar ensuring of a name change in
19 MMX system in regards to this issue; is that
20 correct?
21 A. Correct.
22 Q. And you also don't know with regards to
23 the girls'; is that correct?
24 A. Correct.

 **JOHNSON_224-13_224-21_D (Running 00:01:23.228)**

1. Page 224:13 to 224:21 (Running 00:01:23.228).

13 (WHEREUPON, a document titled EMAIL THREAD
14 was marked as Exhibit 211 for identification.)
15 BY MR. WAGNER:
16 Q. For the record, Bates designated beginning

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

16 Q. For the record, Bates designated beginning

17 Nike41478. And let me know when you're done

18 reviewing.

19 A. Okay.

20 Q. Do you recognize this email?

21 A. Yes.



JOHNSON_230-04_230-10_D (Running 00:00:17.742)

1. Page 230:04 to 230:10 (Running 00:00:17.742)

04 Q. So I will ask again. The email reads, "We

05 (Nike) is being challenged for trademark

06 infringement on "Cool Compression."

07 Is that referring to my client, Lontex's

08 challenge to Nike's usage of the term "Cool

09 Compression"?

10 A. Yes.



JOHNSON_230-17_231-13_CD (Running 00:01:08.611)

1. Page 230:17 to 231:13 (Running 00:01:08.611)

17 Q. So this email shows -- says, "The new

18 naming structure update should resolve the issue as

19 "Compression" should no longer show up in the

20 product name. Can you take a look at below styles

21 and coordinate with your sales brand teams to help

22 get these updated as soon as possible. The

23 "Compression" call-out needs to be -- to come out of

24 the product name. It can be on a silhouette line

25 below, but not in the product name next to the

Total Number of Clips:120

Total Number of Segments:120

Total Running Time:00:50:05.295

01 work.

02 What is the "silhouette line below" for a

03 Nike Pro product?

04 A. In this context, it's referencing -- I

05 believe it's referencing Nike.com.

06 Q. So your understanding is this email

07 concerns making changes to usage on Nike.com?

08 A. Yes.

09 Q. Does this email concern making changes to

10 usage in the Nike Pro catalogs?

11 A. With the context that I have in this

12 communication, I believe it's referring just to

13 Nike.com.



JOHNSON_233-05_233-08_D (Running 00:00:20.971)

1. Page 233:05 to 233:08 (Running 00:00:20.971)

05 So did any communication get sent out

06 within Nike to instruct that "Cool Compression"

07 should be taken out of the product name beyond just

08 the product name showing up on Nike.com?



JOHNSON_233-10_233-13_D (Running 00:00:10.011)

1. Page 233:10 to 233:13 (Running 00:00:10.011)

10 THE WITNESS: There is additional

11 communication to -- beyond this email shown in front

12 of me around the Lontex issue and actions to be


13 taken.



JOHNSON_233-15_233-17_D (Running 00:00:09.290)


Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

15 Q. Did the actions to be taken concern
16 changing product names on any place other than Nike.
17 com?

 **JOHNSON_233-19_D** (Running 00:00:01.430)


1. Page 233:19 to 233:19 (Running 00:00:01.430).

19 THE WITNESS: Yes.

 **JOHNSON_233-21_234-04_D** (Running 00:00:40.008)


1. Page 233:21 to 234:04 (Running 00:00:40.008).

21 Q. Did they concern the catalogs?
22 A. The communications that I was exposed to
23 and a part of were more broad in general and
24 specifying all places in which it needed to come out
25 of in use of terms like language we need to separate
01 Nike Pro Cool from the compression fit and consumer
02 facing, writing, documentation, literature,
03 whatever, however you would categorize anything that
04 is in written word.

 **JOHNSON_234-05_234-08_D** (Running 00:00:12.701)

1. Page 234:05 to 234:08 (Running 00:00:12.701).

05 Q. Do you feel that the necessary people
06 within Nike to fully enact that consumer facing name
07 change were communicated to with the message of the
08 name change?

 **JOHNSON_234-10_234-19_D** (Running 00:00:24.551)

1. Page 234:10 to 234:19 (Running 00:00:24.551).

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

10 THE WITNESS. To the extent of my
11 knowledge, I would answer that question as yes, I
12 believe all appropriate parties were informed of
13 necessary steps to take.
14 BY MR. WAGNER:
15 Q. What is the basis for that belief?
16 A. Based on the exposure that I had, I trust
17 the people who have been involved in this
18 communication and other communication acted as
19 instructed to do.



JOHNSON_235-06_235-18_D (Running 00:00:48.400)

1. Page 235:06 to 235:18 (Running 00:00:48.400)


06 Q. Do you know if any communications were
07 sent to retailers in 2016 advising them that the
08 term "Cool Compression" should be removed from
09 product -- Nike Pro Cool products with compression
10 fit?
11 A. I do not know.
12 Q. Do you know if anyone from Nike in the
13 team sports was contacted to remove "Cool
14 Compression" from the product names in their
15 consumer facing literature?
16 A. Without reviewing all communications I was
17 a part of, I can't answer that with confidence so I
18 don't know.



JOHNSON_236-25_237-03_D (Running 00:00:18.900)


Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

25 Q. Did you take any steps to ensure that new
01 people coming into the Nike Pro ecosystem would be
02 aware of the directive not to use "Cool Compression"
03 in a product name?

 **JOHNSON_237-05_237-12_D (Running 00:00:26.840)**


1. Page 237:05 to 237:12 (Running 00:00:26.840).

05 THE WITNESS: When you say "Nike Pro
06 ecosystem", I'm taking that as referencing anyone
07 that touched Nike Pro product; is that correct?
08 BY MR. WAGNER:
09 Q. Yes.
10 A. And by "Nike Pro product," it means across
11 all of the different places. I don't -- I was not
12 informing all new people of this issue.

 **JOHNSON_237-15_237-18_D (Running 00:00:14.100)**

1. Page 237:15 to 237:18 (Running 00:00:14.100).

15 what did you do to ensure if someone came onto the
16 team in -- in 2017 or any later time, that they
17 would know that "Cool Compression" could not be used
18 in a product name?

 **JOHNSON_237-20_237-24_D (Running 00:00:23.670)**

1. Page 237:20 to 237:24 (Running 00:00:23.670).

20 THE WITNESS: For future Nike Pro
21 products, I -- I assume that as we address the issue
22 in this time frame, that it would not resurface, so

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

23 no steps were taken to inform people in the future

24 of the -- of the situation.



JOHNSON_241-08_241-09_D (Running 00:00:05.741)

1. Page 241:08 to 241:09 (Running 00:00:05.741)

08 Q. So -- this is a document Bates labeled

09 Nike41487, email from Nick Johnson to Rachel Henry



JOHNSON_242-18_242-22_D (Running 00:00:12.441)

1. Page 242:18 to 242:22 (Running 00:00:12.441)

18 Q. So I'll ask my question again. Do you

19 have a specific recollection of ever instructing

20 anybody that "Cool Compression" as a phrase or

21 adjacent to each other should not be used in a

22 product description?



JOHNSON_242-24_243-06_D (Running 00:00:21.860)

1. Page 242:24 to 243:06 (Running 00:00:21.860)

24 THE WITNESS: I do not have a specific

25 recollection of a moment in time, but as part of my

01 responsibility as PLM for Nike Pro, tech sheets and

02 other things would be under my review, and if those

03 were to be updated and I was reviewing them and

04 something came up, I would imagine that I would

05 communicate that to the person that needed to be

06 changed.



JOHNSON_243-14_243-30_D (Running 00:00:26.401)

1. Page 243:14 to 243:20 (Running 00:00:26.401)


14 Q. You're assuming that you must have done it

Total Number of Clips:120

Total Number of Segments:120


Total Running Time:00:50:05.295

15 because it's something you should have done, is that
16 correct?
17 A. I'm assuming that it would have been done
18 because I believe that I would have done that, yes.
19 So you can put whatever word you want on that in my
20 specific instance in which I was referencing.

 **JOHNSON_244-07_244-12_D** (Running 00:00:23.119)


1. Page 244:07 to 244:12 (Running 00:00:23.119)

07 Q. Do you know if the tech sheets were, in
08 fact, updated to Nike.net to remove "Cool
09 Compression" from the product name?
10 A. I do not know if the "compression fit" was
11 removed to no longer be adjacent next to "Cool" on
12 tech sheets on Nike.net.

 **JOHNSON_244-21_244-24_D** (Running 00:00:11.659)

1. Page 244:21 to 244:24 (Running 00:00:11.659)

21 Q. Do you know if the descriptor was removed
22 from catalog references to Nike Pro Cool products
23 with compression fit?
24 A. I do not.

 **JOHNSON_249-015_249-18_D** (Running 00:00:17.019)


1. Page 249:15 to 249:18 (Running 00:00:17.019)

15 Q. Do you know if Nike took any steps in 2016
16 to affirmatively notify retailers that product names
17 should not use "Cool Compression" for Nike Pro Cool
18 products?

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295


1. Page 249:20 to 249:22 (Running 00:00:07.970)

20 THE WITNESS: For Nike Pro Cool products,
21 I do not know if there was specific communication to
22 retailers.

 JOHNSON_250-06_250-10_D (Running 00:00:16.859)


1. Page 250:06 to 250:10 (Running 00:00:16.859)

06 Q. Okay. Would you expect retailers to
07 change their product names in their websites and
08 their retail associate vernacular without being
09 affirmatively told that "Cool Compression" shouldn't
10 be used?

 JOHNSON_250-12_250-15_D (Running 00:00:07.760)


1. Page 250:12 to 250:15 (Running 00:00:07.760)

12 THE WITNESS: Given the hypothetical
13 situation that you just described, I wouldn't expect
14 them to change anything because they wouldn't know
15 there was an issue.

 JOHNSON_256-18_256-20_D (Running 00:00:14.650)

1. Page 256:18 to 256:20 (Running 00:00:14.650)

18 Q. I'm handing you what's been marked as
19 Bates starting Nike00021856, fall 2017 NFL SG Ap.
20 and EQ USA. Are you familiar with this document?


 JOHNSON_257-06_257-07_D (Running 00:00:02.979)

1. Page 257:06 to 257:07 (Running 00:00:02.979)

06 Q. Are you familiar with this document?

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

07 A. I've seen this document.

 JOHNSON_257-13_257-16_CD (Running 00:00:21.740)


1. Page 257:13 to 257:16 (Running 00:00:21.740).

13 Q. And what is this document?

14 A. This document looks like a subsection of

15 what appears to be some product descriptions from

16 Nike.net.


 JOHNSON_257-22_257-24_D (Running 00:00:12.210)

1. Page 257:22 to 257:24 (Running 00:00:12.210).

22 Q. Do you know why a month after you sent


23 your email to the team, this material would have

24 been created for Nike.net still using "Cool COMP"?

 JOHNSON_258-01_D (Running 00:00:01.540)

1. Page 258:01 to 258:01 (Running 00:00:01.540).


01 THE WITNESS: I do not know.

 JOHNSON_258-03_258-04_D (Running 00:00:06.640)

1. Page 258:03 to 258:04 (Running 00:00:06.640).


03 Q. Would this usage be inconsistent with the

04 directive that you had given a month earlier?

 JOHNSON_258-20_D (Running 00:00:01.210)

1. Page 258:20 to 258:20 (Running 00:00:01.210).

20 A. Correct.

 JOHNSON_280-10_280-14_D (Running 00:00:18.040)

1. Page 280:10 to 280:14 (Running 00:00:18.040).

10 Do you know if in response to Lontex's

11 assertion of rights in "Cool Compression", any

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

12 presentation was made at any of these account rep

13 gatherings about avoiding usage of "Cool" adjacent

14 to "Compression"?



JOHNSON_280-16_D (Running 00:00:01.780)

1. Page 280:16 to 280:16 (Running 00:00:01.780).

16 THE WITNESS: I do not know.



JOHNSON_283-08_283-11_D (Running 00:00:13.269)

1. Page 283:08 to 283:11 (Running 00:00:13.269).

08 Q. Sitting here today, do you think that you

09 should have done anything more to make sure that the

10 directive of ceasing use of "Cool Compression" in

11 2016 was actually accomplished in full?



JOHNSON_283-13_283-15_D (Running 00:00:06.250)

1. Page 283:13 to 283:15 (Running 00:00:06.250).

13 THE WITNESS: Sitting here today, as I

14 previously stated, I think I that I took the

15 necessary steps to enact the action necessary.

Total Number of Clips:120
Total Number of Segments:120
Total Running Time:00:50:05.295

Designation Run Report

Nike Initials + Lontex Counters

Lehrer, Norman 02-19-2020

Nike Initial Designations 00:11:19

Total Time 00:11:19



Lehrer-Nike Initials + Lontex Counters

Page/Line	Source	ID
8:22 - 8:25	Lehrer, Norman 02-19-2020 (00:00:09) 8:22 Q. Good morning, Mr. Lehrer. Thank you 8:23 for your cooperation in appearing today. 8:24 You're a lawyer; right? 8:25 A. Correct.	Lehrer.1
39:13 - 39:18	Lehrer, Norman 02-19-2020 (00:00:17) 39:13 How long have you been a lawyer, 39:14 Mr. Lehrer? 39:15 A. First admitted in 1974. 39:16 Q. And do you practice in the area of 39:17 patents and trademarks? 39:18 A. I do.	Lehrer.2
40:3 - 40:13	Lehrer, Norman 02-19-2020 (00:00:29) 40:3 Q. Do you consider yourself a specialist 40:4 when it comes to trademarks? 40:5 A. Yes. 40:6 Q. So when you say you do work related 40:7 to trademarks, does that involve prosecution 40:8 of trademark applications to registration? 40:9 A. Yes. 40:10 Q. How many years have you been involved 40:11 in prosecuting trademark applications to 40:12 registration? 40:13 A. Since 1973, '4.	Lehrer.3
41:22 - 42:2	Lehrer, Norman 02-19-2020 (00:00:12) 41:22 Q. And if you are going to go to the 41:23 next step where you file a trademark 41:24 application, how do you go about gathering the 41:25 -- the information needed to complete that 42:1 application? 42:2 A. I ask the client.	Lehrer.4
43:13 - 43:19	Lehrer, Norman 02-19-2020 (00:00:18) 43:13 Q. How do you go about determining 43:14 whether an application should be filed on a 43:15 use basis or an intent to use basis? 43:16 A. I ask the client whether they are 43:17 using the mark. If they're using it, I file 43:18 it on a use basis. If they're not using the 43:19 mark, I file an intent to use.	Lehrer.5
44:5 - 44:7	Lehrer, Norman 02-19-2020 (00:00:08)	Lehrer.6

Lehrer-Nike Initials + Lontex Counters

Page/Line	Source	ID
44:5 - 44:18	<p>44:5 Q. And what types of questions do you</p> <p>44:6 ask clients to determine whether they're</p> <p>44:7 actually using a mark or not?</p> <p>Lehrer, Norman 02-19-2020 (00:00:26)</p> <p>44:9 THE WITNESS: My question usually</p> <p>44:10 is, are you selling product with that mark,</p> <p>44:11 because I always ask for the dates of first</p> <p>44:12 use. And if they are, if they say yes, I file</p> <p>44:13 it as -- as an actual use. If they say no,</p> <p>44:14 then I file it as an intent to use.</p> <p>44:15 I don't -- I don't go to my</p> <p>44:16 clients' place of business and check out what</p> <p>44:17 they're doing. I usually take their word for</p> <p>44:18 it.</p>	Lehrer.7
46:19 - 46:21	<p>Lehrer, Norman 02-19-2020 (00:00:06)</p> <p>46:19 Q. Would you ever file an application</p> <p>46:20 without verifying the information, including</p> <p>46:21 that information with the client?</p>	Lehrer.8
46:23 - 47:5	<p>Lehrer, Norman 02-19-2020 (00:00:16)</p> <p>46:23 THE WITNESS: I think I said that</p> <p>46:24 before. I always take the client's word for</p> <p>46:25 it. I can't -- I don't independently verify,</p> <p>47:1 if that's what your question is. I take the</p> <p>47:2 information they provide to me. I take that</p> <p>47:3 as truth because I have no way to</p> <p>47:4 independently verify it and I use that</p> <p>47:5 information.</p>	Lehrer.9
49:6 - 49:12	<p>Lehrer, Norman 02-19-2020 (00:00:15)</p> <p>49:6 I -- I wanted to clarify that you</p> <p>49:7 do, in fact, alert your clients to the fact</p> <p>49:8 that a statement of use will need to be filed</p> <p>49:9 in order for an intent to use application to</p> <p>49:10 proceed to registration?</p> <p>49:11 A. Yes. And we do that when we receive</p> <p>49:12 the notice of allowance. Yes.</p>	Lehrer.10
49:20 - 50:5	<p>Lehrer, Norman 02-19-2020 (00:00:22)</p> <p>49:20 Q. Who prepares statements of use in</p> <p>49:21 your office?</p> <p>49:22 A. I do.</p> <p>49:23 Q. And how do you go about gathering the</p>	Lehrer.11

Page/Line	Source	ID
	49:24 information for a statement of use?	
	49:25 A. The same way I would when I	
	50:1 originally file. I -- the client provides me	
	50:2 with the information.	
	50:3 Q. And do you, again, take your client's	
	50:4 word for it?	
	50:5 A. Yes.	
51:13 - 52:1	Lehrer, Norman 02-19-2020 (00:00:31)	Lehrer.12
	51:13 Q. And when maintenance filings are due	
	51:14 on a registration, do you alert your clients	
	51:15 to those?	
	51:16 A. Yes.	
	51:17 Q. How do you do that?	
	51:18 A. A letter.	
	51:19 Q. And who is responsible for preparing	
	51:20 Section 8 & 15 filings in your office?	
	51:21 A. I am.	
	51:22 Q. How do you gather information for	
	51:23 those filings?	
	51:24 A. The same way. I ask the clients,	
	51:25 they provide me with information. I use that	
	52:1 information and I file.	
52:10 - 52:17	Lehrer, Norman 02-19-2020 (00:00:15)	Lehrer.13
	52:10 Q. Who is responsible in your office for	
	52:11 preparing trademark renewal applications	
	52:12 pursuant to Section 8 & 9?	
	52:13 A. I am.	
	52:14 Q. How do you gather the information for	
	52:15 those filings?	
	52:16 A. The same way. I ask the client and I	
	52:17 use that information and I file.	
52:24 - 53:4	Lehrer, Norman 02-19-2020 (00:00:12)	Lehrer.14
	52:24 Q. Do you send any correspondence to the	
	52:25 client alerting the client to what information	
	53:1 is needed to file a renewal application?	
	53:2 A. Yes.	
	53:3 Q. And what do you ask for in such	
	53:4 correspondence?	
53:6 - 54:4	Lehrer, Norman 02-19-2020 (00:01:00)	Lehrer.15
	53:6 THE WITNESS: Are you still using	

Page/Line

Source

ID

53:7 the mark? If so, do you want to renew it?
 53:8 Provide me with whatever it is, evidence of
 53:9 use. I take that information and I file.
 53:10 I usually ask them for money, too,
 53:11 depending on who it is.
 53:12 BY MS. DURHAM:
 53:13 Q. And you do understand that trademark
 53:14 rights are derived through use in the United
 53:15 States; correct?
 53:16 A. Yes.
 53:17 Q. Is it your understanding that use is
 53:18 required to maintain a trademark registration
 53:19 in the United States?
 53:20 A. Yes.
 53:21 Q. What type of use?
 53:22 A. Use in commerce.
 53:23 Q. What is your understanding of the
 53:24 terminology "use in commerce" when it comes to
 53:25 the requirement for trademark applications to
 54:1 proceed to registration in the U.S.?
 54:2 A. The mark is used on the product, the
 54:3 product is sold in commerce or it is
 54:4 transported in commerce.

55:3 - 55:5

Lehrer, Norman 02-19-2020 (00:00:08)

Lehrer.16

55:3 Q. And do you ever give verbal
 55:4 explanations as to what is required for use in
 55:5 commerce?

55:7 - 55:15

Lehrer, Norman 02-19-2020 (00:00:28)

Lehrer.17

55:7 THE WITNESS: Absolutely.
 55:8 BY MS. DURHAM:
 55:9 Q. And I believe you told me a moment
 55:10 ago that you do know, under Section 45 of the
 55:11 Trademark Act, that in order for the use to be
 55:12 deemed use in commerce, the mark need not just
 55:13 be placed on the goods, but it also must be
 55:14 sold or transported in commerce; is that
 55:15 right?

55:17 - 55:21

Lehrer, Norman 02-19-2020 (00:00:08)

Lehrer.18

55:17 THE WITNESS: Are you asking me
 55:18 whether I know that or whether the statute

Lehrer-Nike Initials + Lontex Counters

Page/Line	Source	ID
56:20 - 56:23	<p>55:19 says that? I mean, I'll answer it. As far as 55:20 I know, yes, to both, the statute requires it 55:21 and yes, I'm aware of it.</p> <p>Lehrer, Norman 02-19-2020 (00:00:11)</p> <p>56:20 Q. And so what would have been the bona 56:21 fide use in commerce to support the 56:22 registrations for Cool Compression that you 56:23 helped secure for Lontex?</p>	Lehrer.19
56:25 - 57:7	<p>Lehrer, Norman 02-19-2020 (00:00:18)</p> <p>56:25 THE WITNESS: The mark is applied 57:1 to the goods and the goods are transported in 57:2 commerce. 57:3 BY MS. DURHAM: 57:4 Q. So if the mark wasn't actually 57:5 applied to the goods, then there wouldn't have 57:6 been proper bona fide use in commerce; is that 57:7 correct?</p>	Lehrer.20
57:9 - 57:11	<p>Lehrer, Norman 02-19-2020 (00:00:03)</p> <p>57:9 THE WITNESS: From a legal 57:10 standpoint, I guess that -- that's correct, 57:11 yes.</p>	Lehrer.21
73:8 - 73:16	<p>Lehrer, Norman 02-19-2020 (00:00:16)</p> <p>73:8 Q. I'm showing you what's been marked 73:9 Lehrer Exhibit 6. I'd like to turn our 73:10 attention to that for a moment. 73:11 Do you recognize this document, 73:12 sir? 73:13 A. Yes. 73:14 Q. What do you recognize it to be? 73:15 A. A letter to the client advising that 73:16 the application was allowed.</p>	Lehrer.22 DX425.1
74:14 - 74:23	<p>Lehrer, Norman 02-19-2020 (00:00:24)</p> <p>74:14 Q. You go on to state, "This application 74:15 was filed under the 'intent to use' provision 74:16 of the Trademark Laws." 74:17 And so you made it clear to Mr. 74:18 Nathan at this point that the application had 74:19 been filed under an intent to use provision; 74:20 correct? 74:21 A. I made that statement. Whether it</p>	Lehrer.23 DX425.1.1

Lehrer-Nike Initials + Lontex Counters

Page/Line	Source	ID
	74:22 was clear or not, I -- I -- I believe it was 74:23 clear.	
75:9 - 75:17	Lehrer, Norman 02-19-2020 (00:00:23)	Lehrer.24
	75:9 Q. Next you state, "Although the 75:10 Trademark Office has approved your 75:11 application, the Office will not issue a 75:12 registration to you until the mark has been 75:13 used in commerce and a proper statement to 75:14 that effect is filed."	DX425.1.2
	75:15 So by virtue of this letter, you 75:16 told Mr. Nathan that use was required for the 75:17 application to issue to registration; correct?	
75:18 - 75:18	Lehrer, Norman 02-19-2020 (00:00:02)	Lehrer.25
	75:18 A. That certainly was my intent.	
77:1 - 77:18	Lehrer, Norman 02-19-2020 (00:00:45)	Lehrer.26
	77:1 Q. to be clear, you would have had 77:2 to have some communication with Mr. -- with 77:3 Mr. Nathan in order to file a statement of 77:4 use; correct?	
	77:5 A. Yes.	
	77:6 Q. And what type of information would 77:7 you need to collect in that sort of 77:8 communication?	
	77:9 A. Whether he was actually using the 77:10 mark, the dates of use. I'm not sure what 77:11 else.	
	77:12 Q. Well, and you'd need a specimen; 77:13 correct?	
	77:14 A. Yes, of course.	
	77:15 Q. So you'd need to get all three of 77:16 those things from a client before filing a 77:17 statement of use; is that correct?	
	77:18 A. Yes.	
78:1 - 78:5	Lehrer, Norman 02-19-2020 (00:00:10)	Lehrer.27
	78:1 Q. So you -- you would not have filed a 78:2 statement of use for this application without 78:3 communicating with Mr. Nathan about those 78:4 three things; is that correct?	clear
	78:5 A. Yes.	
79:15 - 80:14	Lehrer, Norman 02-19-2020 (00:01:17)	Lehrer.28

Page/Line

Source

ID

79:15 Q. So looking at page 44410, which I
 79:16 believe is the actual statement of use, this
 79:17 swears that the Cool Compression mark was
 79:18 being used on or in connection with all of the
 79:19 goods in the notice of allowance; is that
 79:20 correct?
 79:21 A. Is that correct what it says, yes.
 79:22 Q. Well, did you, in fact, swear to the
 79:23 United States Patent and Trademark Office that
 79:24 the Cool Compression mark was in use in
 79:25 connection with all those goods?
 80:1 A. I declared that upon the filing of
 80:2 this, yes.
 80:3 Q. And you declared that based on what?
 80:4 A. Information from my client, I
 80:5 assumed, or my belief. I'm not sure.
 80:6 Q. Well, I thought we just talked about
 80:7 the fact that you needed to gather those three
 80:8 pieces of information from your client. You
 80:9 did, in fact, do that; right?
 80:10 A. Yes, but the three pieces of
 80:11 information that you discussed were not
 80:12 necessarily all the goods, and that could have
 80:13 been an error. I don't know that I ever asked
 80:14 him whether it was on all the goods.

DX872.70
 DX872.70.1

132:11 - 133:5

Lehrer, Norman 02-19-2020 (00:00:58)

clear
 Lehrer.29

132:11 Q. I'm showing you what's been marked
 132:12 Lehrer Exhibit 15. This appears to be another
 132:13 copy of the March -- at least one page of this
 132:14 appears to be another copy of the March 9th,
 132:15 2007, letter we were just looking at in
 132:16 Exhibit 14.
 132:17 Do you agree?
 132:18 A. Yes.
 132:19 Q. And do you see that there is some
 132:20 handwriting on this letter as well?
 132:21 A. Yes.
 132:22 Q. And whose handwriting is that; do you
 132:23 know?
 132:24 A. I do not know.


DX405.2

DX405.2.1


Page/Line	Source	ID
	132:25 Q. Okay.	
	133:1 So it's -- this where it says	
	133:2 here, "Cool Compression, need to sell items	
	133:3 with Cool Compression," that handwriting is	
	133:4 not yours, is it -- is it, sir?	
	133:5 A. It is not mine.	
143:2 - 143:15	Lehrer, Norman 02-19-2020 (00:00:39)	Lehrer.30
	143:2 Q. Do you see in the signature section	DX873.12
	143:3 on page 44431 that Ben Wagner signed this	
	143:4 revocation of attorney?	
	143:5 A. I see on the document, there's a	
	143:6 signature of Ben L. Wagner, yes.	
	143:7 Q. Do you know why Ben Wagner would have	
	143:8 filed a revocation of attorney to remove you	
	143:9 as lawyer on this registration and replace you	
	143:10 with Andrew Skale?	
	143:11 A. No.	clear
	143:12 Q. Did you ever ask Mr. Nathan about	
	143:13 that?	
	143:14 A. Quite frankly, I'm not sure I ever	
	143:15 knew.	
<hr/>		
Nike Initial Designations = 00:11:19		
Total Time = 00:11:19		
Documents Shown		
DX405		
DX425		
DX872		
DX873		
<hr/>		
Nike Initial Designations		
Page 9/9		

Case Clips Detailed Report


10290_Lontex v Nike

 **MANGUM, PARKER - VOL 1 - 9/4/2020 66 Clips (Running 00:27:45.319)** **MANGUM_009-09_9-11_D (Running 00:00:12.590)****1. Page 09:09 to 09:11 (Running 00:00:12.590)**

- 09 Q Good morning, sir. Can you please state
- 10 and spell your name for the record?
- 11 A Parker Mangum. P-a-r-k-e-r, M-a-n-g-u-m.

 **MANGUM_016-10_16-13_CD (Running 00:00:12.759)****1. Page 16:10 to 16:13 (Running 00:00:12.759)**

- 10 Q And it looks like you started as global
- 11 brand marketing intern athletic training June 2010
- 12 to January 2011; is that correct?
- 13 A Yes.

 **MANGUM_019-06_19-10_D (Running 00:00:14.889)****1. Page 19:06 to 19:10 (Running 00:00:14.889)**

- 06 Q It looks like your next position at Nike
- 07 was a global associate product line manager, Nike
- 08 Pro Combat apparel from January 2011 to June 2013;
- 09 is that correct?
- 10 A Yes.

 **MANGUM_019-11_19-15_CD (Running 00:00:14.360)****1. Page 19:11 to 19:15 (Running 00:00:14.360)**

- 11 Q And what was your general role in that job
- 12 function?
- 13 A The primary role is to support the product

Total Number of Clips:66

Total Number of Segments:66

Total Running Time:00:27:45.319

14 management team and product director of Nike Pro

15 Combat.



MANGUM_020-06_20-13_CD (Running 00:00:28.000)

1. Page 20:06 to 20:13 (Running 00:00:28.000)

06 Q And what type of apparel is involved with

07 Nike Pro Combat apparel?

08 A Baselayer.

09 Q And what is baselayer?

10 A Baselayer, as we defined it, is a first

11 layer in sport. It's kind of the -- it's the

12 technical edge, close to your body for

13 thermoregulation purposes.



MANGUM_020-20_20-24_CD (Running 00:00:24.080)

1. Page 20:20 to 20:24 (Running 00:00:24.080)

20 Q But in terms of what is a baselayer product

21 or apparel, I guess what I'm asking is Nike has fits

22 for compression and fitted, correct?

23 A Yes. Those are our two primary fits for

24 baselayer.



MANGUM_026-03_26-13_CD (Running 00:00:40.570)

1. Page 26:03 to 26:13 (Running 00:00:40.570)

03 Q It looks like the next position that you

04 had at Nike was global product line manager Nike Pro


05 apparel from July 2013 to April 2016; is that

06 correct?

07 A Yes.


Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

08 Q How was this role different from the
09 associate product line manager role you held just
10 prior to this one?
11 A As the PLM I had more ownership over the
12 styles and the briefing process to -- that are
13 designed in development team.

 MANGUM_027-06_27-08_CD (Running 00:00:08.570)


1. Page 27:06 to 27:08 (Running 00:00:08.570)

06 By PLM you're referring to product line
07 manager when you used that earlier; is that correct?
08 A Correct.

 MANGUM_027-19_27-22_CD (Running 00:00:13.219)


1. Page 27:19 to 27:22 (Running 00:00:13.219)

19 Q It looks like in April 2016 or since
20 April 2016 you've been global product line manager
21 for women's running apparel; is that correct?
22 A Yes.

 MANGUM_029-06_29-09_D (Running 00:00:20.541)

1. Page 29:06 to 29:09 (Running 00:00:20.541)

06 Q Can you tell me what a tech sheet is?
07 A A tech sheet is a standardized form across
08 the company used to describe the key features and
09 benefits of individual styles.

 MANGUM_029-10_29-14_CD (Running 00:00:15.130)

1. Page 29:10 to 29:14 (Running 00:00:15.130)

10 Q It also has images of products, right?

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

11 A Yes.

12 Q And it identifies the different colors the

13 product is available in, right?

14 A Yes.



MANGUM_029-18_29-22_CD (Running 00:00:22.760)

1. Page 29:18 to 29:22 (Running 00:00:22.760)

18 Q What has your role been involving

19 preparation of tech sheets?

20 A There is a tech sheet writing team at Nike

21 with whom we meet to go over those benefits and

22 details and images and colors on the tech sheet.



MANGUM_031-01_31-03_CD (Running 00:00:11.251)

1. Page 31:01 to 31:03 (Running 00:00:11.251)

01 Who actually, you know, boots on the ground

02 wrote the first draft tech sheet?

03 A The tech sheet writer.



MANGUM_031-11_31-16_CD (Running 00:00:25.751)

1. Page 31:11 to 31:16 (Running 00:00:25.751)

11 Q So they would do a draft of the tech sheet

12 and do you know after they prepared the draft what

13 they would do with the document next?

14 A We would sit down together and go over the

15 drafts and I would make edits or suggestions to the

16 tech sheet.



MANGUM_033-04_33-07_D (Running 00:00:12.041)

1. Page 33:04 to 33:07 (Running 00:00:12.041)

Total Number of Clips:66
Total Number of Segments:66
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04 Q Sure. Are you aware of any instances in

05 which your edits or suggestions were not

06 incorporated in the tech sheet?

07 A I am not aware.



MANGUM_033-08_33-10_D (Running 00:00:14.340)

1. Page 33:08 to 33:10 (Running 00:00:14.340)

08 Q Isn't it correct that tech sheets had to be

09 approved by you before they would get handed off to

10 the next group at Nike?



MANGUM_033-12_33-13_D (Running 00:00:03.471)

1. Page 33:12 to 33:13 (Running 00:00:03.471)

12 THE WITNESS: My approval was part of the

13 overall process, yes.



MANGUM_034-03_34-10_D (Running 00:00:29.230)

1. Page 34:03 to 34:10 (Running 00:00:29.230)

03 Q Are you aware of what Sports Knowledge

04 Underground is?

05 A Yes.

06 Q Can you tell me what it is?

07 A I don't know specifics, to be totally

08 honest. I know that at the time it was the group

09 that housed the tech sheets for access by retail

10 associates.



MANGUM_034-11_34-14_CD (Running 00:00:14.430)

1. Page 34:11 to 34:14 (Running 00:00:14.430)

11 Q Do you know why the tech sheets were housed

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

12 on Sports Knowledge Underground?

13 A Like I said, for access for the sales team

14 and retail associates.



MANGUM_034-15_34-16_D (Running 00:00:07.229)

1. Page 34:15 to 34:16 (Running 00:00:07.229)

15 Q And why were sales teams and retail

16 associates given access to these tech sheets?



MANGUM_034-18_34-22_D (Running 00:00:15.445)

1. Page 34:18 to 34:22 (Running 00:00:15.445)

18 THE WITNESS: I don't know all the

19 purposes, whether it housed there, but one purpose

20 that I am familiar with is to learn about the

21 product, to be able to speak to the product

22 competently to consumers and accounts.



MANGUM_045-17_45-24_D (Running 00:00:33.990)

1. Page 45:17 to 45:24 (Running 00:00:33.990)

17 What types of changes to a product offering

18 would trigger a need for a new updated tech sheet?

19 A Anytime a new style number is created with

20 an update to that style, whether it's fit or

21 material or end use or benefit, that's when a new

22 tech sheet is triggered.

23 Q Or color, right?

24 A Or color, yes.



MANGUM_067-25_68-05_CD (Running 00:00:49.850)

1. Page 67:25 to 68:05 (Running 00:00:49.850)

Total Number of Clips:66

Total Number of Segments:66

Total Running Time:00:27:45.319

25 Q I uploaded another document to the chat

01 starting with Exhibit 3 and it has

02 LTX_EDPA_00033647. Could you download that, please?

03 A Downloading. I have it open.

04 Q Have you ever seen this before?

05 A I never have.



MANGUM_068-11_069-05_D (Running 00:01:37.860)

1. Page 68:11 to 69:05 (Running 00:01:37.860)

11 Q Near the middle of the page there's a

12 heading "Tech Sheets" in bold. Just below that it

13 says, Tech sheets are ground zero for product

14 descriptions at Nike; do you see that?

15 A Yes.

16 Q Do you agree with that statement?

17 A Not necessarily.

18 Q And why is that?

19 A Product descriptions originate amongst the

20 design team, the developer team, myself, and the

21 product creation triad. And we discuss what those

22 product descriptions are when a new style number is

23 -- a new style is created, the description in terms

24 of its fit and length and material content, that's

25 decided ahead of time before it even reaches a tech

01 sheet writer.

02 Q Does the tech sheet capture all of that

03 descriptor information that is discussed amongst the

Total Number of Clips:66

Total Number of Segments:66

Total Running Time:00:27:45.319

04 trad, I believe you referred to?

05 A Yes.



MANGUM_070-19_71-02_D (Running 00:00:26.419)

1. Page 70:19 to 71:02 (Running 00:00:26.419)

19 Q So after that first sentence in that
20 paragraph we're looking at, the next sentence goes
21 on, We start with a blank sheet of paper, listen to
22 a bunch of jargon from product managers and
23 designers, and turn it into a document that can
24 travel throughout the company and Nike's retailers,
25 across languages, across users, and eventually
01 straight to the consumer; do you see that?
02 A I do see that.



MANGUM_071-03_71-05_D (Running 00:00:13.261)

1. Page 71:03 to 71:05 (Running 00:00:13.261)

03 Q Based on your understanding of how tech
04 sheets were generated during the 2015 to 2018 time
05 frame, do you believe this is an accurate statement?




MANGUM_071-11_71-20_D (Running 00:00:41.100)

1. Page 71:11 to 71:20 (Running 00:00:41.100)

11 A I agree with it as far as it's a document
12 that can travel throughout the company, to the
13 retailers; but I want to make sure I clarify or --
14 yeah, clarify my stance on eventually straight to
15 the consumer.
16 To my knowledge tech sheets don't go


Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

17 straight to the consumer. The information as
18 described from a store associate, for example, may
19 go to a consumer. But as far as the tech sheet
20 itself, to my knowledge, is not seen by a consumer.

 **MANGUM_079-09_79-10_CD** (Running 00:00:07.910)


1. Page 79:09 to 79:10 (Running 00:00:07.910)

09 Q Mr. Mangum, I've uploaded Exhibit 5, Nike
10 00041973.

 **MANGUM_079-11_79-23_D** (Running 00:00:43.370)

1. Page 79:11 to 79:23 (Running 00:00:43.370)

11 (Exhibit 5, 6/9/14 email chain; Bates No.
12 NIKE-00041973, was marked.)
13 BY MR. CROCKETT:
14 Q Do you have that in front of you?
15 A I do.
16 Q Do you recognize this document?
17 A It appears to be a string of emails.
18 Q And you're an author and recipient of some
19 of these emails, right?
20 A I am.
21 Q Actually, I should say you're either an
22 author or recipient of all of these emails, right?
23 A Correct.

 **MANGUM_083-17_83-20_D** (Running 00:00:22.710)

1. Page 83:17 to 83:20 (Running 00:00:22.710)

17 Q Turning to the top email, June 9, 2014, at

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

18 8:27 p.m., it refers to "COOL" formerly "CORE"

19 styles; do you see that?

20 A I do.



MANGUM_083-25_84-03_D (Running 00:00:22.250)

1. Page 83:25 to 84:03 (Running 00:00:22.250)

25 Q What are "COOL" formerly "CORE" styles?

01 A Core was a designation of styles before we

02 reset a certain part of our line and renamed it to

03 Cool.



MANGUM_084-09_84-14_CD (Running 00:00:21.590)

1. Page 84:09 to 84:14 (Running 00:00:21.590)

09 I'm

10 referring to in this email the Nike Pro Combat Core

11 product line which has been renamed to Nike Pro

12 Combat Cool for fall '15. Or parts of that Core

13 line, I should clarify, parts of that Core line were

14 turned into Cool. Nike Pro Combat Cool.



MANGUM_084-16_84-18_CD (Running 00:00:06.740)

1. Page 84:16 to 84:18 (Running 00:00:06.740)

16 Q Did the word "Combat" eventually get

17 dropped from that line?

18 A It did.



MANGUM_085-07_85-09_CD (Running 00:00:15.030)

1. Page 85:07 to 85:09 (Running 00:00:15.030)

07 Q So the Core products were updated with

08 things such as silhouettes, but otherwise the line

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

09 was reset with a new name of "Cool", is that right?



MANGUM_085-10_85-19_CD (Running 00:00:38.760)

1. Page 85:10 to 85:19 (Running 00:00:38.760)

- 10 A No. Let me clarify. So Core designated
11 our entry level product lower price points. Core
12 then became -- it got split into two. You have Cool
13 styles and you have Warm styles as material
14 modifiers, or material descriptors; product that was
15 designed to keep you warm, product that was designed
16 to keep you cool.
17 So Nike Pro Cool and Nike Pro Warm resulted
18 out of the -- out of the divestment of Nike Pro
19 Combat Core styles.



MANGUM_086-02_86-09_CD (Running 00:00:33.380)

1. Page 86:02 to 86:09 (Running 00:00:33.380)

- 02 Q What other parts of the reset were there?
03 A We reset Nike Pro Combat Hyperstrong, Nike
04 Pro Combat Hyperrecovery. These are all different
05 silos within the Nike Pro Combat line.
06 Within Warm and Cool, I should add, we also
07 had Nike Pro Combat Hypercool, Nike Pro Combat
08 Hypercool Max, Nike Pro Combat Hyperwarm, Nike Pro
09 Combat Hyperwarm Max.



MANGUM_086-17_86-24_CD (Running 00:00:39.440)

1. Page 86:17 to 86:24 (Running 00:00:39.440)

- 17 Q What's the difference between a Nike Pro

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

18 Hypercool compression short and a Nike Pro Cool
19 compression short?
20 A Our Nike Pro Hypercool franchise has more
21 breathability and added zone panels of mesh to keep
22 our athletes cooler and at a more comfortable state.
23 It's a higher price point than Nike Pro Combat Cool
24 and offers more technology and benefits.



MANGUM_089-14_89-15_CD (Running 00:00:07.590)

1. Page 89:14 to 89:15 (Running 00:00:07.590)

14 Q Can you recall what the goals were of the
15 reset of the Core styles?



MANGUM_089-17_90-04_CD (Running 00:00:54.340)

1. Page 89:17 to 90:04 (Running 00:00:54.340)

17 THE WITNESS: One of the goals of the reset
18 was to make it more clear what Core actually meant.
19 We had found in discussions with our athletes and
20 consumers that they weren't sure when exactly to
21 wear certain Core product, whether it was to keep
22 them warm, whether it was to keep them cool, keep
23 them dry, et cetera.
24 And the decision was made, again, I don't
25 know by whom, to delineate out from Core our entry
01 level Cool styles, Nike Pro Cool styles, and our
02 Nike Pro Warm styles out of that Core offering to
03 make it more clear within the product construct of
04 stay cool and stay warm, Nike Pro product lines.

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319



1. Page 92:23 to 92:25 (Running 00:00:12.860)

23 I'm uploading it now. Please let
24 me know if you receive it. And it's labeled
25 Exhibit 6 Nike 00042100.



MANGUM_093-06_94-04_CD (Running 00:01:43.140)

1. Page 93:06 to 94:04 (Running 00:01:43.140)

06 Q Do you recognize this document?
07 A Again, it appears to be an email exchange
08 between myself or at least I was maybe
09 recipient/author.
10 Q The second email from the top of the page,
11 the second in this chain here, it refers to an FA15
12 Core update; do you see that?
13 A I do.
14 Q And what is that referring to?
15 A I'm gathering that the Core update is
16 updating the -- the reset is updating the name to
17 Nike Pro Cool.
18 Q This also refers to a launch plan. And I'm
19 looking at the bottom email in this chain. We're in
20 the process of finalizing the launch plan; do you
21 see that?
22 A Are you referring to the email from Liz
23 Terzo?
24 Q Yes, that's correct.

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319


25 A I see that.

01 Q Do you know what the launch plan was?

02 A No, I don't.

03 Q Do you have any recollection of a launch


04 plan for this NPC Core update?

 MANGUM_094-06_94-07_CD (Running 00:00:04.229)

1. Page 94:06 to 94:07 (Running 00:00:04.229)

06 THE WITNESS: I don't recall anything

07 specific about the launch plan.

 MANGUM_094-09_94-16_D (Running 00:00:38.210)

1. Page 94:09 to 94:16 (Running 00:00:38.210)

09 Q Can you recall anything general about the

10 launch plan?

11 A Generally speaking, we updated the systems


12 to include Nike Pro Cool or Nike Pro Warm and a

13 divestment of the Core name. And the plan, just to

14 make sure that it was properly communicated

15 downstream to the merchandising partners, of which

16 Liz Terzo is a merchandiser.

 MANGUM_103-02_104-12_CD (Running 00:02:58.080)

1. Page 103:02 to 104:12 (Running 00:02:58.080)

02 Q The email after this June 30, 2014, at

03 5:30 p.m., it says, The geo teams have started

04 requesting information on the FA15 Core update -- it

05 looks like a hyphen -- they want to know what is new

06 and better about this version; do you see that?

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

07 A I do.

08 Q What was new and better about this version?

09 A How much time do you have, Counsel?

10 Q Take the time you need.

11 A Based on my memory going back six years, we

12 updated some design lines, we pieced in some areas

13 of mesh for added breathability and ventilation down

14 the center back, for example. We updated the

15 overall look and feel of -- we differentiated

16 between our compression fit and our fitted fit more

17 clearly.

18 Whereas before, during Core, while they

19 were labeled as Core, the compression fit and the

20 fitted fit looked very similar, which was confusing

21 consumers as to how it should fit. So we made it

22 very clear, via the design lines, and even by adding

23 in a side slit hem on the compression fit with a

24 slight drop tail for easy tuck in and just made it

25 more clear which was the compression fit versus

01 which was the fitted fit.

02 We added -- we cleaned up the back neck

03 tape, added the words "Nike Pro" to delineate that

04 this is part of the Nike Pro apparel line. We

05 updated some seam -- some seam colors. We updated

06 the colors of the seams. Some seams were more

07 tonal, some seams were more contrast, but all this

Total Number of Clips:66

Total Number of Segments:66

Total Running Time:00:27:45.319

08 was designed to delineate different features and
09 benefits within the Nike Pro Cool line.
10 These were all added benefits and features
11 from the Nike -- the former Nike Pro Combat Core
12 line.



MANGUM_106-02_106-10_D (Running 00:00:33.600)

1. Page 106:02 to 106:10 (Running 00:00:33.600).

02 Q Mr. Mangum, are you familiar with a program
03 at Nike or that Nike uses called Anaqua?
04 A Yes.
05 Q And what's your understanding of what
06 Anaqua is?
07 A My understanding is fairly limited. I know
08 it is used to submit names through legal to search
09 for legal terms, trademarks. That's about all I
10 know about Anaqua.



MANGUM_108-14_108-15_D (Running 00:00:08.560)

1. Page 108:14 to 108:15 (Running 00:00:08.560).

14 Did you use the Anaqua system in the 2014
15 to 2018 time frame at Nike?



MANGUM_108-17_108-18_D (Running 00:00:03.320)

1. Page 108:17 to 108:18 (Running 00:00:03.320).

17 THE WITNESS: I don't recall if I did or
18 not.



MANGUM_111-12_111-13_D (Running 00:00:06.571)

1. Page 111:12 to 111:13 (Running 00:00:06.571).

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

12 Q Have you spoken to Nick Johnson about

13 running any searches in the Anaqua system?



MANGUM_111-15_111-16_D (Running 00:00:09.700)

1. Page 111:15 to 111:16 (Running 00:00:09.700)

15 THE WITNESS: During my time as PLM, I

16 can't recall having ever used the Anaqua system.



MANGUM_120-16_120-18_CD (Running 00:00:17.850)

1. Page 120:16 to 120:18 (Running 00:00:17.850)

16 Q I'm uploading a document for you to

17 download, please. If you could let me know when you

18 have it. This is Exhibit 7, Nike 00040506.



MANGUM_122-07_122-15_D (Running 00:00:40.190)

1. Page 122:07 to 122:15 (Running 00:00:40.190)

07 Q Looking at the first page of this document

08 with Bates ending 40506. In the lower left-hand

09 portion within the boxed area it says, All style

10 names continue to be submitted to legal via Anaqua.

11 Did I read that right?

12 A Yes.

13 Q Is this consistent with your understanding

14 of the policy or directions to employees at Nike?

15 A Yes.



MANGUM_123-04_123-06_CD (Running 00:00:08.231)

1. Page 123:04 to 123:06 (Running 00:00:08.231)

04 Q And you submitted a single name into

05 Anaqua. You did not submit every style name into

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

06 Anaqua, isn't that right?



MANGUM_123-08_123-13_CD (Running 00:00:19.599)

1. Page 123:08 to 123:13 (Running 00:00:19.599).

08 THE WITNESS: I want to make sure this is
09 very clear. Nick reached out to me asking if I had
10 submitted to Anaqua the term "cool compression" to
11 which I replied no, I did not because it's not a
12 name that we would -- it's not a phrase that we
13 would normally submit through Anaqua.



MANGUM_124-25_125-02_CD (Running 00:00:05.660)

1. Page 124:25 to 125:02 (Running 00:00:05.660).

25 Q What's your best estimate of how many names
01 you've submitted to Anaqua in your entire career at
02 Nike?



MANGUM_125-04_125-15_CD (Running 00:00:44.490)

1. Page 125:04 to 125:15 (Running 00:00:44.490).

04 THE WITNESS: I couldn't give a good
05 estimate. Again, this is the responsibility of the
06 product management team. So whether it was myself
07 or a teammate or a colleague, sometimes that's
08 unbeknownst to me. So I can't give you an estimate
09 or a concrete number.
10 BY MR. CROCKETT:
11 Q How many people were on the product
12 management team for Nike Pro Cool in 2014?
13 A The direct Nike Pro product management team

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

14 included one product director, three PLMs, and one

15 APLM.



MANGUM_126-02_126-12_D (Running 00:00:50.690)

1. Page 126:02 to 126:12 (Running 00:00:50.690).

02 Q You wrote the email to the geo merchants

03 about the approval of the Nike Pro Cool launch,

04 right?

05 A I wrote the email indicating that we had

06 the green light, as mentioned, to rename the styles

07 from Nike Pro Combat Core to Nike Pro Combat cool

08 for that product line in that fall '15 time frame.

09 Q You were responsible for supervising Nike

10 Pro Cool from the global product line manager

11 perspective, weren't you?

12 A Yes.



MANGUM_129-11_129-15_D (Running 00:00:15.120)

1. Page 129:11 to 129:15 (Running 00:00:15.120).

11 So correct me if I'm wrong, but the tech

12 sheets, catalogs, and Nike online website are

13 important sources of information for the retailer

14 associates and consumers to learn about the

15 products; isn't that right?



MANGUM_129-18_129-19_D (Running 00:00:05.520)

1. Page 129:18 to 129:19 (Running 00:00:05.520).


18 THE WITNESS: They are sources of

19 information for those third parties, yes.

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319


1. Page 129:21 to 130:01 (Running 00:00:21.060)

21 Q Are you aware of any other sources of
22 information other than those?
23 And specific, are you aware of any other
24 source of information regarding the Nike Baselayer
25 products which, as I understand it, includes the
01 Nike Pro Cool products?

 MANGUM_130-03_130-04_D (Running 00:00:03.861)


1. Page 130:03 to 130:04 (Running 00:00:03.861)

03 THE WITNESS: Other than the three you
04 mentioned, no, none come to mind.

 MANGUM_139-24_140-02_CD (Running 00:00:20.071)

1. Page 139:24 to 140:02 (Running 00:00:20.071)

24 Q So let me just clarify here, Mr. Mangum.
25 Did you tell Mr. Johnson that you searched any
01 specific terms in Anaqua in 2014 when the Nike Pro
02 Cool product line launched?

 MANGUM_140-04_140-09_CD (Running 00:00:21.700)


1. Page 140:04 to 140:09 (Running 00:00:21.700)

04 THE WITNESS: As I said earlier, Nick
05 communicated to me asking if I had searched for the
06 term "cool compression" to which I said I had not,
07 nor would we because that's not a style name.
08 Those are not terms or a style name that we
09 would even submit to Anaqua in the first place.

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319


1. Page 141:03 to 141:06 (Running 00:00:11.921)

- 03 Q And you have no recollection of actually
04 submitting any style names that included the words
05 "cool compression"; is that right?
06 A Correct.

 MANGUM_141-11_141-13_D (Running 00:00:10.160)


1. Page 141:11 to 141:13 (Running 00:00:10.160)

- 11 Q You have no recollection of submitting any
12 style names regarding Nike Pro Cool product line
13 into Anaqua?

 MANGUM_141-15_141-16_D (Running 00:00:08.729)

1. Page 141:15 to 141:16 (Running 00:00:08.729)

- 15 THE WITNESS: Correct. I don't recall. I
16 do not have recollection of those name submissions.

 MANGUM_145-04_145-12_CD (Running 00:00:25.951)

1. Page 145:04 to 145:12 (Running 00:00:25.951)

- 04 Q Do you know when Nike began using the words
05 "compression" and "fitted" to describe the fit of
06 products?
07 A No, I do not.
08 Q Was Nike using those terms to describe fit
09 when you joined Nike?
10 A Yes.
11 Q And that was around what year again?
12 A I started in Nike Pro in 2011.

Total Number of Clips:66
Total Number of Segments:66
Total Running Time:00:27:45.319

Case Clips Detailed Report

10290_Lontex v Nike

 **MUNRO, NEIL - VOL 1 - 12/12/2019 81 Clips (Running 00:32:17.170)**

 **MUNRO_008-09_08-11_D (Running 00:00:07.037)**

1. Page 08:09 to 08:11 (Running 00:00:07.037)

09 Q Good morning, Mr. Munro. Can you please
10 state your name, full name for the record?
11 A Neil Tappan Munro.

 **MUNRO_016-03_16-16_CD (Running 00:00:43.011)**

1. Page 16:03 to 16:16 (Running 00:00:43.011)

03 Q What are your current job responsibilities
04 at Nike?
05 A Currently I work within the global
06 sustainability team leading the efforts for
07 sustainable product focused on apparel.
08 Q What is "sustainable product"?
09 A It's product that uses materials that
10 produce less greenhouse gas emissions.
11 Q And you said that was focused on apparel,
12 correct?
13 A Yes, sir.
14 Q Your work at Nike, has that generally
15 focused on apparel throughout your time there?
16 A Yes, sir.

 **MUNRO_016-20_17-10_CD (Running 00:00:59.151)**

1. Page 16:20 to 17:10 (Running 00:00:59.151)

Total Number of Clips:81
Total Number of Segments:81
Total Running Time:00:32:17.170

20 Q How long have you been working on

21 sustainable product at Nike?

22 A I started the Tuesday after Labor Day. So

23 that would put it a little over three months.

24 Q What area did you work on before that?

25 A I was the global category apparel lead for

01 men's training.

02 Q And what were your job duties as global

03 category apparel lead?

04 A To lead the product creation efforts for

05 the apparel of men's training. So everything that's

06 done in the gym from high intensity workouts to more

07 low intensity, such as yoga. And that encompasses a

08 variety of product classifications. So it could be

09 fleece, performance tops, shorts, as well as

10 baselayer.



MUNRO_017-14_18-14_CD (Running 00:01:46.931)

1. Page 17:14 to 18:14 (Running 00:01:46.931)

14 Q Did your work with global category apparel

15 lead include product creation efforts for Nike Pro?

16 A Yes, sir.

17 Q How long were you global category apparel

18 lead at Nike?

19 A Trying to remember the exact dates. I

20 started in January of '16 at Nike and then June of

21 '17 I became the global category apparel lead at

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22 Nike. And then September of '19 I moved to be the

23 sustainability product lead for apparel.

24 Q So between January 2016 and June 2017, what

25 was your job title at Nike?

01 A Product director.

02 Q And what did you do as product director,

03 generally?

04 A I led the product creation efforts for the

05 Nike Pro product line.

06 Q You were focused on the Nike Pro product

07 line in that role; is that right?

08 A Yes, sir.

09 Q And as global category apparel lead, did

10 you work on other product lines in addition to Nike

11 Pro?

12 A Yes, sir. As discussed, fleece, shorts,

13 performance tops, the rest of the training line to

14 round out the offering.



MUNRO_024-09_24-23_D (Running 00:00:55.631)

1. Page 24:09 to 24:23 (Running 00:00:55.631)

09 (Exhibit 227, 12/19/16 email to N. Munro

10 from N. Johnson re FA17 Classification

11 Constructs; Bates Nos. NIKE-000411489

12 through 41192, was marked.)

13 BY MR. CROCKETT:

14 Q Mr. Munro, the reporter's just handed you

Total Number of Clips:81

Total Number of Segments:81

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15 what's been marked Exhibit 227. Could you please

16 review this?

17 A Sure.

18 Q Have you finished reviewing it?

19 A Yes.

20 Q Do you recognize this document?

21 A Yes.

22 Q What is this document?

23 A It's an overview of the Nike Pro business.



MUNRO_025-07_25-22_CD (Running 00:01:05.040)

1. Page 25:07 to 25:22 (Running 00:01:05.040)

07 Q And the subject of this email is Construct

08 Pyramids, right?

09 A Correct.

10 Q What's a construct pyramid?

11 A A product construct is how product teams

12 internally create their product hierarchy. It's

13 typically shaped in a pyramid to show that the top

14 represents statement or pinnacle product with the

15 smallest amount of distribution which represents the

16 smallest part of the triangle.

17 As you move down the triangle you move down

18 in price point and that allows for greater levels of

19 distribution. And also it's at lower price points.

20 Q So on the second page where we see this

21 pyramid, is that a construct pyramid for the Nike

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22 Pro Cool products?



MUNRO_025-24_26-02_CD (Running 00:00:11.750)

1. Page 25:24 to 26:02 (Running 00:00:11.750)

24 THE WITNESS: That is a product construct
25 for part of Nike Pro that represents the product
01 that has the benefit of Cool which is more for warm
02 weather wear.



MUNRO_027-07_27-12_CD (Running 00:00:22.000)

1. Page 27:07 to 27:12 (Running 00:00:22.000)

07 Q How is this type of construct pyramid used
08 in terms of product development?
09 A This is an internal tool that allows the
10 product development team to understand how we want
11 to deliver product and create product to the market,
12 but also for our athletes.



MUNRO_033-15_33-25_CD (Running 00:00:31.829)

1. Page 33:15 to 33:25 (Running 00:00:31.829)

15 Q Now, I guess I'm trying to understand what
16 is a product line for Nike Pro?
17 A The product that we deliver for Nike Pro.
18 Q What is the product you deliver for Nike
19 Pro?
20 A It's what's represented in front of me in
21 this exhibit in the pyramids. So we can look at
22 page 2 that you referenced a few times. Hyper Cool
23 Max, Hypercool, Cool, Nike Baselayer. We can turn

Total Number of Clips:81
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24 to page 3, Hyper Warm Max, Hyperwarm, Warm, Nike

25 Baselayer.



MUNRO_035-19_35-24_D (Running 00:00:20.260)

1. Page 35:19 to 35:24 (Running 00:00:20.260)

19 Q So I think you mentioned statement
20 products, perhaps smaller, more targeted offerings.
21 But overall in terms of Nike Pro, who is your
22 customer?
23 Who are you trying to design and market
24 products for?



MUNRO_036-01_36-13 (Running 00:00:41.449)

1. Page 36:01 to 36:13 (Running 00:00:41.449)

01 THE WITNESS: We have a sharp point with
02 the consumer. And I'm going to speak from my
03 experience within men's training. So we will speak
04 to males typically between the age of 18 and 25, 26.
05 Those who may have -- currently be a game day
06 athlete. What I mean by "game day" is they could be
07 a football player, a soccer player, a baseball
08 player, et cetera.
09 But also those athletes may have moved
10 beyond that but still have a passion for Nike Pro
11 and the product or being in the gym and working out
12 at that level knowing that they have the confidence
13 that Nike delivers through their product line.



MUNRO_036-15_36-17_D (Running 00:00:15.850)

Total Number of Clips:81
Total Number of Segments:81
Total Running Time:00:32:17.170

15 Q So Nike Baselayer, for example, are you
16 saying the target market is a male 18 to 26 who
17 wants to go to the gym or be athletic?



MUNRO_036-19_37-24_D (Running 00:01:21.160)

1. Page 36:19 to 37:24 (Running 00:01:21.160)

19 THE WITNESS: So when we design we want to
20 have a sharp point so that we can get more specific
21 in who we're building product for.
22 We also understand that we serve a great
23 large demographic through our distribution points
24 and our geography. So Nike Baselayer typically goes
25 to a lower level of distribution such as moderate
01 department stores like Kohl's. And it typically is
02 at a lower price point.
03 Therefore, it could encompass and be super
04 democratic, a 15-year-old boy to an 84-year-old man.
05 So while we don't design for that breadth, because
06 that's really challenging and difficult to provide a
07 brief for a designer to do so, we have a target area
08 that we want to design.
09 Typically we focus those target design
10 areas on the top of the pyramid where we're
11 delivering innovation. And then we let all that
12 influence kind of trickle down into the lines that
13 are shown below.

Total Number of Clips:81
Total Number of Segments:81
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14 Whether it's Hypercool, Cool, Nike
15 Baselayer, or if you flip the page, again. I love
16 to go back and use Warm because it's another part of
17 the construct. Hyper Warm Max is the sharp point
18 that we're designing for and that's the, really,
19 specificity.
20 And then we go to Hyperwarm, Warm, and Nike
21 Baselayer where we want to bring some of the design
22 cues, details, or things that are familiar so you
23 can see the connection from the top of the pyramid
24 down to the bottom.



MUNRO_038-04_39-06_CD (Running 00:01:17.200)

1. Page 38:04 to 39:06 (Running 00:01:17.200)

04 Q Maybe, could you define what do you mean by
05 "sharp point"?
06 A So as I just said, instead of designing for
07 an individual who is between 15 and 84 years old
08 that covers the entire globe and does every
09 activity, our sharp point could be 18- to
10 24-year-old who plays a field sport or has recently
11 just moved on from a field sport.
12 And that's what we really want to look into
13 and work with to understand the insights. And,
14 again, if you look on page 2, 3, and 4 you see how
15 we actually call out these insights, right?
16 They want to keep me dry, superior sweat

Total Number of Clips:81

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17 management. So how do we do that? We do that

18 through our material which is a metallized PET. And

19 then what is the craft and what we want to bring to

20 that?

21 And so that's how we get our sharp points.

22 We deliver and drive against insights, how we make

23 our materials, designs.

24 And, again, that also holds true if you

25 turn to page 3, if you look at this, keep me warm,

01 that's thermal regulation. So the insight is a

02 certain gram fusion twill with a dual density so

03 that it has lighter weight for the warmth, et

04 cetera.

05 So this is really crucial for us to deliver

06 and be the leader in apparel like Nike is.



MUNRO_039-17_39-18_CD (Running 00:00:07.320)

1. Page 39:17 to 39:18 (Running 00:00:07.320)

17 times. I mean, in general, Nike's target market for

18 Nike Pro products includes athletes, right?



MUNRO_039-20_40-05_CD (Running 00:00:25.890)

1. Page 39:20 to 40:05 (Running 00:00:25.890)

20 THE WITNESS: Yeah. I mean, Nike has a

21 statement that was founded and created by one of our

22 founders, Bill Bowerman, that if you have a body,

23 you're an athlete. Right? And so that's "athlete"

24 with an asterisk. So that encompasses that broad

Total Number of Clips:81
Total Number of Segments:81
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25 breadth of people I mentioned.

01 But we also have tier one athletes such as
02 like a LeBron James. So we certainly want to focus
03 on MOL. But we understand everybody as an athlete
04 and our job is to really protect sports and deliver
05 for sports.



MUNRO_040-13_40-16 (Running 00:00:08.730)

1. Page 40:13 to 40:16 (Running 00:00:08.730)

13 Q Well, I'm trying to understand. You said
14 athlete with an asterisk. And it sounds like it's
15 really just everybody. Everyone who has a body is
16 an athlete.



MUNRO_040-19_41-08_CD (Running 00:00:36.630)

1. Page 40:19 to 41:08 (Running 00:00:36.630)

19 THE WITNESS: We want to be inclusive. And
20 so while we will design into a sharp point so that
21 we can have a point of view and we can really learn
22 and lead, we want to allow everybody to have the
23 ability to wear our product and to feel good about
24 doing so.
25 That's why we have the bottom of these
01 pyramids that are internal documents, but you can
02 see Cool, Warm, et cetera, that go to the broadest
03 depths of distribution.
04 So, again, to reference a Kohl's or a
05 Dick's Sporting Goods. And these are at really

Total Number of Clips:81
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06 attractive price points for consumers, but they know

07 that it's stuff that is also worn at the very

08 pinnacle of athletes.



MUNRO_083-13_83-19_D (Running 00:00:33.970)

1. Page 83:13 to 83:19 (Running 00:00:33.970)

13 Q Have you, in fact, taken on the initiative

14 to change the name or investigate changing the name

15 of a product construct?

16 A Yes, I have.

17 Q How many times have you done that, do you

18 think?

19 A Probably three to four times.



MUNRO_084-06_84-08_D (Running 00:00:08.480)

1. Page 84:06 to 84:08 (Running 00:00:08.480)

06 Q And in those instances where you changed

07 the name of the product construct, did that take a

08 matter of months to implement a change?



MUNRO_084-10_D (Running 00:00:02.540)

1. Page 84:10 to 84:10 (Running 00:00:02.540)

10 THE WITNESS: Yes, as discussed earlier.



MUNRO_086-05_86-11_CD (Running 00:00:16.780)

1. Page 86:05 to 86:11 (Running 00:00:16.780)

05 Q Sure. I think we were talking about three

06 instances where you've changed the name of the

07 product construct, correct?

08 A Correct.

Total Number of Clips:81

Total Number of Segments:81

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09 Q What were the names of the product

10 constructs originally and then after the change?

11 Maybe that will help.



MUNRO_086-13_86-15_CD (Running 00:00:07.310)

1. Page 86:13 to 86:15 (Running 00:00:07.310)

13 THE WITNESS: One construct change was in

14 Nike Pro, two construct changes were in men's

15 athletic training.



MUNRO_086-17_86-18_CD (Running 00:00:03.700)

1. Page 86:17 to 86:18 (Running 00:00:03.700)

17 Q And what were the name changes, if you can

18 recall?



MUNRO_086-20_86-23_CD (Running 00:00:07.380)

1. Page 86:20 to 86:23 (Running 00:00:07.380)

20 THE WITNESS: We don't change the name of

21 the construct. We change the ingredients in the

22 construct. So there's a difference there for

23 clarity point.



MUNRO_087-18_87-23_CD (Running 00:00:12.790)

1. Page 87:18 to 87:23 (Running 00:00:12.790)

18 Q And I want to focus on the name of the

19 product construct.

20 A Okay. We don't, again, name product

21 constructs outside of, I would say, Nike Pro

22 construct. There's no -- there's names, again,

23 ingredients within the constructs. So if you could

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1. Page 89:12 to 89:19 (Running 00:00:21.670)

12 Q And I think you mentioned changes to names
13 within the Nike Pro construct, at least one that you
14 specifically worked on, right?
15 A Yeah.
16 Q Specifically, what about naming within the
17 construct did you change, did your team implement
18 under your direction?
19 A Sure.

 MUNRO_089-21_90-05_CD (Running 00:00:27.970)

1. Page 89:21 to 90:05 (Running 00:00:27.970)

21 THE WITNESS: The naming that we did is we
22 abolished using the word "cool" in our core product
23 offering. That was the major name change that we
24 made.
25 We also moved away from using the Hyper
01 Cool Max name. So that was the secondary one. And
02 I say it's secondary because if you look at the size
03 of business and you look at the number of styles
04 presented and all the other metrics that we
05 discussed, it was not as large.

 MUNRO_095-04_95-06_D (Running 00:00:11.300)

1. Page 95:04 to 95:06 (Running 00:00:11.300)

04 Q Do you or your team do any research to see
05 if, as you're naming a product, any other company

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00 already uses a similar product name?



MUNRO_095-08_95-13_D (Running 00:00:16.850)

1. Page 95:08 to 95:13 (Running 00:00:16.850)

08 THE WITNESS: Again, I can't speak if my
09 team does it. But if there's a name that we're
10 trying to find for a new technology or something
11 that's going to be lasting and big, the research
12 might be just to Google different names as we come
13 up with them to see if anything pops up.



MUNRO_097-22_97-24_D (Running 00:00:12.170)

1. Page 97:22 to 97:24 (Running 00:00:12.170)

22 Q Sure. In terms of changing product names
23 to be consistent with the product construct going
24 forward, how does that happen?



MUNRO_098-01_98-07_D (Running 00:00:23.920)

1. Page 98:01 to 98:07 (Running 00:00:23.920)

01 THE WITNESS: Okay. So I think the clarity
02 needs to be that we don't change product names, we
03 create new product. So anything that's going to be
04 newly created will reflect the new names based off
05 of the new construct.
06 We will not go back and change names until
07 we have new product, if that makes sense.



MUNRO_116-13_116-15 (Running 00:00:03.960)

1. Page 116:13 to 116:15 (Running 00:00:03.960)

13 Q The end customer does not receive those

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14 tech sheets?

15 A No.



MUNRO_127-07_127-10_D (Running 00:00:12.429)

1. Page 127:07 to 127:10 (Running 00:00:12.429).

07 Q Let me ask you this: Is there a separate

08 tech sheet for every season for a style?

09 A There is not a separate tech sheet for

10 every style for every season.



MUNRO_127-21_128-01_CD (Running 00:00:23.281)

1. Page 127:21 to 128:01 (Running 00:00:23.281).

21 A Annually. Tech sheets are created when a

22 product is updated. So through material or design

23 aesthetic is when we create tech sheets.

24 Q Do you also create a tech sheet when a

25 style is initially launched?

01 A Yeah. Sorry. Yeah, when it's new.



MUNRO_128-02_128-04_D (Running 00:00:06.440)

1. Page 128:02 to 128:04 (Running 00:00:06.440).

02 Q So a tech sheet's created when it's

03 launched or if there's any significant change to the

04 product?



MUNRO_128-06_D (Running 00:00:02.560)

1. Page 128:06 to 128:06 (Running 00:00:02.560).

06 THE WITNESS: If it's new, yes.



MUNRO_129-18_129-21 (Running 00:00:17.021)

1. Page 129:18 to 129:21 (Running 00:00:17.021).

Total Number of Clips:81
Total Number of Segments:81
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18 Q And, again, for each Nike style number that

19 is launched for Nike Pro Cool products, would there

20 be a tech sheet similar to the format we see in

21 Exhibit 228?



MUNRO_129-23_129-25_CD (Running 00:00:11.690)

1. Page 129:23 to 129:25 (Running 00:00:11.690)

23 THE WITNESS: For each new product created

24 within Nike Pro or a product that has a major update

25 there would be a tech sheet created for it.



MUNRO_149-02_149-03_D (Running 00:00:06.620)

1. Page 149:02 to 149:03 (Running 00:00:06.620)

02 Q If only the style name changed, which

03 category would that fall into amongst these four?



MUNRO_149-05_149-08_D (Running 00:00:07.531)

1. Page 149:05 to 149:08 (Running 00:00:07.531)

05 THE WITNESS: I can't answer that question

06 because we wouldn't just change the style name

07 without changing the style number. So that just

08 would not happen.



MUNRO_149-10_149-11_D (Running 00:00:02.849)

1. Page 149:10 to 149:11 (Running 00:00:02.849)

10 Q You've never seen that happen in your time

11 at Nike?



MUNRO_149-13_149-14_D (Running 00:00:03.720)

1. Page 149:13 to 149:14 (Running 00:00:03.720)

13 THE WITNESS: I haven't seen the style name

Total Number of Clips:81
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14 change without a style number.



MUNRO_158-17_158-19_D (Running 00:00:17.971)

1. Page 158:17 to 158:19 (Running 00:00:17.971).

17 Q Do you recall a time where the word
18 "compression" was phased out of product naming or
19 descriptors for Nike Pro products?



MUNRO_158-21_159-04 (Running 00:00:29.011)

1. Page 158:21 to 159:04 (Running 00:00:29.011).

21 THE WITNESS: Compression is just another
22 benefit or feature, like cool to warm, fitted to
23 compression. The only familiarity I have with
24 phasing it out is some of the naming work that Nike
25 did to try to streamline and create consistent
01 naming convention across the company.
02 So the phasing out was moving from
03 compression to tight. And so that was the phasing
04 out that I'm aware of.



MUNRO_159-06_159-18_CD (Running 00:00:40.549)

1. Page 159:06 to 159:18 (Running 00:00:40.549).

06 Q And are you familiar with what the reasons
07 are for why that decision was made to, I guess, move
08 from compression to tight?
09 A As I just mentioned, in terms of
10 streamlining and creating consistency across Nike on
11 all the different preferences, we wanted to create a
12 simple understandable view that would cross men's

Total Number of Clips:81
Total Number of Segments:81
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13 and women's boys and girls.

14 And since compression fit has a little more
15 of a connotation for male sport athletes, we wanted
16 to be inclusive of women and use the word "tight"
17 since everybody understood that that meant a tight
18 fit.



MUNRO_170-23_171-07_D (Running 00:00:39.199)

1. Page 170:23 to 171:07 (Running 00:00:39.199)

23 Q What did you do in late summer 2016 to
24 implement changes to the use of the word
25 "compression" for Nike Pro products?
01 A We reached out to our other category
02 partners who adopted Nike Pro styles and asked them
03 not to add the identifier "compression" within the
04 overall description of the product and instead to
05 have that as a tertiary or secondary.
06 And then we reached out to our partners in
07 Nike Direct and asked them to do the same.



MUNRO_171-08_171-09_D (Running 00:00:05.111)

1. Page 171:08 to 171:09 (Running 00:00:05.111)

08 Q Did you follow up at all to determine if
09 they implemented that change?



MUNRO_171-11_171-14_D (Running 00:00:09.851)

1. Page 171:11 to 171:14 (Running 00:00:09.851)

11 THE WITNESS: We received confirmation back
12 from the categories that they had made the change.

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13 And we received confirmation back from the Nike

14 Direct partners that they had made the change.



MUNRO_171-16_171-18_CD (Running 00:00:11.140)

1. Page 171:16 to 171:18 (Running 00:00:11.140)

16 Q And was that change to take place going

17 forward on new style numbers or was it to take place

18 also on existing style numbers?



MUNRO_171-20_172-01_CD (Running 00:00:16.180)

1. Page 171:20 to 172:01 (Running 00:00:16.180)

20 THE WITNESS: That change was a

21 combination.

22 BY MR. CROCKETT:

23 Q So it's supposed to take place on both

24 existing style numbers and new; is that correct?

25 A A bit of both, yes. Correct. Depending on

01 where we were with the season, et cetera.



MUNRO_172-02_172-04_D (Running 00:00:12.770)

1. Page 172:02 to 172:04 (Running 00:00:12.770)

02 Q And in terms of Nike offerings going

03 forward, what was the first season that was supposed

04 to be impacted with the change?



MUNRO_172-06_172-13_D (Running 00:00:27.460)

1. Page 172:06 to 172:13 (Running 00:00:27.460)

06 THE WITNESS: Well, if I recollect, that I

07 had heard about this in kind of late summer '16,

08 then I would imagine depending -- the first season

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09 for -- the earliest possible season would be
10 probably holiday of that year. But that's a little
11 bit of speculation. But that could carry through
12 for a year because product creation timelines can be
13 up to 18 months.



MUNRO_177-12_177-17_D (Running 00:00:27.779)

1. Page 177:12 to 177:17 (Running 00:00:27.779)

12 Q Mr. Munro, the reporter's handed you what's
13 been marked Exhibit 232. Please review this and let
14 me know when you're done.
15 A Reviewed.
16 Q Do you recognize this document at all?
17 A Yes, sir.



MUNRO_177-18_177-20_CD (Running 00:00:09.870)

1. Page 177:18 to 177:20 (Running 00:00:09.870)

18 Q What is this document?
19 A The subject of the email is, Use of
20 compression to describe products.



MUNRO_177-21_178-02_D (Running 00:00:19.810)

1. Page 177:21 to 178:02 (Running 00:00:19.810)

21 Q Do you know what the purpose of this email
22 was?
23 A The purpose of this email was to
24 communicate to cross category partners to remove the
25 name ID for the fit of compression from product
01 names. So as discussed earlier in some of the steps

Total Number of Clips:81
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02 that we look to reach out.



MUNRO_179-16_179-19_D (Running 00:00:21.090)

1. Page 179:16 to 179:19 (Running 00:00:21.090).

16 Q So as you pointed out, the compression
17 call-out needs to come out of the product name. And
18 this was a request to these product line managers to
19 implement that change; is that correct?



MUNRO_179-21_180-04_D (Running 00:00:31.390)

1. Page 179:21 to 180:04 (Running 00:00:31.390).

21 THE WITNESS: This email is providing
22 context in terms of that there's a trademark
23 infringement that we're being challenged for; that
24 there is a new naming structure that is coming out
25 that I had mentioned earlier around moving away from
01 the name "compression." And it's asking if we could
02 update as soon as possible and remove the
03 "compression" call-out from the product name. And
04 then put it onto the silhouette line below.



MUNRO_183-17_183-23_D (Running 00:00:34.391)

1. Page 183:17 to 183:23 (Running 00:00:34.391).

17 Q Can you tell me, what is this document?
18 A This document is a Nike Pro naming on
19 Nike.com. Instructs on removing the fit call-out.
20 Q So is this the Nike Direct directive that
21 you were referring to just a few minutes ago?
22 A This is the information to Nike Direct,

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23 correct.



MUNRO_184-06_184-21_D (Running 00:01:11.821)

1. Page 184:06 to 184:21 (Running 00:01:11.821)

06 Q So is it correct that even without a
07 directive from legal the word "compression" should
08 have come out of the product name?
09 A According to this email, that's what it's
10 saying.
11 Q Is your understanding different than what's
12 stated in this email?
13 A My understanding is the naming structure
14 had asked for the fit call-out to be removed from
15 any product identifier and have it be secondary.
16 Q This also says the change should have been
17 impacted for FA16 forward according to the corporate
18 naming structure change; I read that correctly?
19 A You read that second sentence correctly.
20 Q FA16, is that fall '16?
21 A Yes.



MUNRO_189-03_189-06_CD (Running 00:00:15.709)

1. Page 189:03 to 189:06 (Running 00:00:15.709)


03 Q And if I'm understanding you correctly, the
04 removal from Nike's perspective was going to take
05 possibly up to 18 months based on the product life
06 cycle; is that right?



MUNRO_189-08_189-18_CD (Running 00:00:27.919)

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08 THE WITNESS: That's a pretty big vague
09 question, but yes. So while we can impact what we
10 do and what we own every day, in category there are
11 downstream partners who can still have habits in the
12 past on how they articulate or communicate things
13 that we can't change until we update the product
14 into a whole new way of working which is why we
15 talked about some product construct changes.
16 So that's where I think it would have a bit
17 of a phased approach versus being a light switch
18 they can turn overnight.

 **MUNRO_190-09_190-13_D (Running 00:00:22.901)**


1. Page 190:09 to 190:13 (Running 00:00:22.901)

09 Q I am talking about on Nike.com and in Nike
10 catalogs presented to Nike's wholesale customers.
11 What was the timeline for when "compression" would
12 begin coming out of the product name and when that
13 would be completed?

 **MUNRO_190-15_190-17_D (Running 00:00:12.060)**

1. Page 190:15 to 190:17 (Running 00:00:12.060)

15 THE WITNESS: Nike would expect the product
16 name to start being removed in fall '16 and it could
17 be up through spring '18.

 **MUNRO_190-19_190-21_D (Running 00:00:07.750)**

1. Page 190:19 to 190:21 (Running 00:00:07.750)

Total Number of Clips:81
Total Number of Segments:81
Total Running Time:00:32:17.170

19 Q And there was no directive that it had to

20 happen immediately or within two months, something

21 along those lines?



MUNRO_190-23_D (Running 00:00:01.440)

1. Page 190:23 to 190:23 (Running 00:00:01.440).

23 THE WITNESS: I don't know.



MUNRO_191-01_191-13_D (Running 00:00:38.261)

1. Page 191:05 to 191:13 (Running 00:00:38.261).

05 Q The reporter's handed you what's been

06 marked as Exhibit 234. I'll note a gap in Bates

07 number. This is an excerpt from a much larger Nike

08 catalog.

09 Please review this and let me know when

10 you're done.

11 A Finished.

12 Q Do you recognize this?

13 A I do.



MUNRO_192-16_192-17_D (Running 00:00:03.919)

1. Page 192:16 to 192:17 (Running 00:00:03.919).

16 Q Where did this information come from for

17 the catalog, if you're aware?



MUNRO_192-19_192-24_D (Running 00:00:15.179)

1. Page 192:19 to 192:24 (Running 00:00:15.179).

19 THE WITNESS: Came from MMX. So the data

20 system that we've talked about that gives you size

21 ranges and other information. It came from tech

Total Number of Clips:81
Total Number of Segments:81
Total Running Time:00:32:17.170

22 sheets to provide the product details and that's

23 where the imagery all came from between the two of

24 those.



MUNRO_193-01_193-03_CD (Running 00:00:05.829)

1. Page 193:01 to 193:03 (Running 00:00:05.829)

01 BY MR. CROCKETT:

02 Q Is it the copywriting department at Nike

03 that takes the lead in assembling the catalogs?



MUNRO_193-05_193-14_CD (Running 00:00:30.301)

1. Page 193:05 to 193:14 (Running 00:00:30.301)

05 THE WITNESS: Since Nike Pro doesn't work

06 on the catalogs I don't have familiarity with who

07 takes the lead on those.

08 BY MR. CROCKETT:

09 Q So looking at the second product down on

10 the page ending 44, Nike Pro Cool compression short

11 sleeve top; do you see that?

12 A I do.

13 Q So the word "compression" is being used in

14 the product name here, right?



MUNRO_193-16_193-21_CD (Running 00:00:19.069)

1. Page 193:16 to 193:21 (Running 00:00:19.069)

16 THE WITNESS: As stated, the product name

17 is the Nike Pro Cool short sleeve top. And they're

18 adding the fit so that people can tell the

19 difference between the second one and the first one

Total Number of Clips:81
Total Number of Segments:81
Total Running Time:00:32:17.170

20 where it calls out fitted since they have very

21 similar design lines and details to them.



MUNRO_197-14_197-17_D (Running 00:00:12.111)

1. Page 197:14 to 197:17 (Running 00:00:12.111)

14 Q And this is a Nike Team Sports 2017

15 catalog, right?

16 A It says Nike Team Sports 2017 Men's

17 Football, yes.



MUNRO_199-06_199-14_D (Running 00:00:31.940)

1. Page 199:06 to 199:14 (Running 00:00:31.940)

06 Q Was the word "compression" removed from the

07 product name for this catalog, Exhibit 234?

08 A In Exhibit 234 the name "compression" is

09 still represented in the top line of the product

10 item as is the fit call-out for "fitted" in the top

11 name of the one above. Because the directive, if

12 you read the email from the previous, was to remove

13 "fit" from all product names, not just specific to

14 "compression."



MUNRO_209-02_209-08_D (Running 00:01:24.500)

1. Page 209:02 to 209:08 (Running 00:01:24.500)

02 Q The reporter's handed you what's been

03 marked Exhibit 236. Please take time to review this

04 and let me know when you've completed.

05 A (Witness complies.)

06 Okay.

Total Number of Clips:81
Total Number of Segments:81
Total Running Time:00:32:17.170

07 Q Do you recognize this document?

08 A Yes.



MUNRO_209-09_209-11_CD (Running 00:00:09.240)

1. Page 209:09 to 209:11 (Running 00:00:09.240)

09 Q Can you please tell me what it is.

10 A It's a document discussing the fit intent

11 labeling for men's pro.



MUNRO_209-25_210-07_D (Running 00:00:37.028)

1. Page 209:25 to 210:07 (Running 00:00:37.028)

25 Q The email -- the top email in the chain

01 says, I sent this email based on TV's request. Who

02 is TV?

03 A TV is Tancredi Vitale. I'll say that

04 again: T-a-n-c-r-e-d-i, last name V-i-t-a-l-e.

05 Q What was his job title in January 2017?

06 A Global category apparel lead for men's

07 training.



MUNRO_210-14_211-04_D (Running 00:00:57.300)

1. Page 210:14 to 211:04 (Running 00:00:57.300)

14 Q This reference to TV's request, are you

15 familiar with what that request was?

16 A I am familiar with that request, yes.

17 Q What was his request at that time?

18 A If you read through the document, this

19 addresses some conversations we've had earlier

20 around the changing of the names from "compression"

Total Number of Clips:81

Total Number of Segments:81

Total Running Time:00:32:17.170

21 to "tight."

22 Since "compression" is a term that is used
23 regularly across sports to represent a tight fit
24 garment underneath pads, he wanted to be sure we
25 were able to still utilize in some portion in the
01 product description the word "compression" where it
02 was appropriate as a name for those athletes to be
03 able to identify it since "tight" for male does not
04 always equal compression in the sports world.



MUNRO_212-17_212-19_D (Running 00:00:10.281)

1. Page 212:17 to 212:19 (Running 00:00:10.281).

17 Q And I gather from this email, it says, and
18 we agreed as well. So did you personally agree with
19 TD's request?



MUNRO_212-21_213-01_D (Running 00:00:22.451)

1. Page 212:21 to 213:01 (Running 00:00:22.451).

21 THE WITNESS: I agreed that the name
22 "compression" was important to have within PDP for
23 our athletes because of the familiarity with that
24 term for sports kits. And it's very common if you
25 look at Under Armour, adidas, or some of these
01 other companies that we look to as competitors.



MUNRO_246-17_246-24_CD (Running 00:00:24.789)

1. Page 246:17 to 246:24 (Running 00:00:24.789).

17 Is there a consistent way that people
18 across the board in Nike use that phrase, "product

Total Number of Clips:81
Total Number of Segments:81
Total Running Time:00:32:17.170

19 name"?

20 A No. The word "product name" at Nike is

21 used different across category, function, geography.

22 That's why the style number is so important because

23 that will not change and that is truly anchored to

24 everything in that product.


Total Number of Clips:81

Total Number of Segments:81

Total Running Time:00:32:17.170

Case Clips Detailed Report

10290_Lontex v Nike

 **WHITE, DEBORAH ANNE - VOL 1 - 8/14/2020 98 Clips (Running 00:25:21.834)**

 **WHITE_013-05_14-03_D (Running 00:01:10.730)**

1. Page 13:05 to 14:03 (Running 00:01:10.730)

05 Q. So, Ms. White, I see from your LinkedIn title
06 at least it reads: "Senior director, global Nike
07 athlete training and service excellence." It says you
08 had that position from January 2005 to the present; is
09 that accurate?
10 A. The name is accurate. It shouldn't be
11 January 2005.
12 Q. I'm sorry. January 2015.
13 A. Okay. That's correct.
14 Q. Then it says that here in your responsibilities
15 that you were:
16 "Responsible for setting the service
17 vision across retail and consumer services
18 and designing curriculum, training
19 programs, and the internal knowledge base
20 in a way that drives the service culture
21 and engages, inspires, and connects
22 athletes across the globe. Responsible for
23 the creation of digital content for
24 Nike.com Get Help."
25 Is that an accurate description of your

Total Number of Clips:98

Total Number of Segments:98

Total Running Time:00:25:21.834

01 responsibilities in the 2015 to 2017 time frame?

02 A. It's accurate for today. It's not accurate for

03 2015.



WHITE_014-04_14-20_D (Running 00:00:58.330)

1. Page 14:04 to 14:20 (Running 00:00:58.330)

04 Q. So from -- and this is another good point of
05 clarification. The deposition notice is for the 2015 to
06 2017 time period. So unless I ask you otherwise or you
07 let me know otherwise, we'll be talking about that time
08 period. So -- and if there's different answers based on
09 a part of that time period, just go ahead and let me
10 know because it's not my goal to sort of lump everything
11 together.

12 So, so in 2015 to 2017, did you have a set of
13 responsibilities that whole time that was the same?

14 A. Slightly -- they were slightly different.

15 Q. And what were your responsibilities in 2015 to
16 2017 time period?

17 A. So, from that description on LinkedIn, I would
18 remove consumer services. That was not in my scope in
19 2015. And I would remove Nike.com Get Help. The rest
20 would be accurate regarding retail.



WHITE_014-21_15-04_CD (Running 00:00:33.770)

1. Page 14:21 to 15:04 (Running 00:00:33.770)

21 Q. It says that you were responsible for setting
22 the service vision across retail. What does "retail"


23 mean?

24 A. That retail means our owned and/or partner
25 doors. So, to be clear on "partner door," that is our
01 mono-brand stores that are owned by another person or
02 entity. A bit like franchise but we call it partner.
03 It's a different kind of contract. It does not include
04 wholesale.

 WHITE_015-09_15-12_CD (Running 00:00:13.320)

1. Page 15:09 to 15:12 (Running 00:00:13.320)

09 Q. So in your understanding of Nike's retail,
10 there's owned, and then there's partner, and then
11 outside of that is wholesale partner like Dick's?
12 A. Correct.

 WHITE_018-23_19-11_D (Running 00:01:08.990)

1. Page 18:23 to 19:11 (Running 00:01:08.990)

23 Q. And in your role as being responsible for
24 setting the service vision across retail, what does that
25 role entail?
01 A. So, in 2015 to 2017 time frame, I worked
02 collaboratively with a cross-functional group to set the
03 service ethos statements, the guiding statement for our
04 retail what we call athletes, which would be sales
05 associates and management in the stores, with a set of
06 behaviors that can help them achieve that set of ethos.
07 We also root all of our training in service and
08 make sure that it ties to, you know, this aspect of your

09 job, promotes our ethos in this way, so all training

10 materials I consider to be a part of our service

11 strategy.



WHITE_043-01_43-02_D (Running 00:00:04.920)

1. Page 43:01 to 43:02 (Running 00:00:04.920)

01 Q. Are tech sheets ever reviewed by retail

02 athletes?



WHITE_043-04_43-09_D (Running 00:00:23.810)

1. Page 43:04 to 43:09 (Running 00:00:23.810)

04 THE WITNESS: My answer will be not based on

05 witnessing but general knowledge.

06 The tech sheets were accessible but not -- my

07 team does not have anything to do with them, so I know

08 that they were accessible by athletes who chose to get

09 those.



WHITE_066-24_66-25_D (Running 00:00:06.580)

1. Page 66:24 to 66:25 (Running 00:00:06.580)

24 Q. Okay. Do you know where tech sheets are made

25 available to Nike retail athletes?



WHITE_067-02_67-03_D (Running 00:00:06.090)

1. Page 67:02 to 67:03 (Running 00:00:06.090)

02 THE WITNESS: In 2015 to 2017 tech sheets were

03 posted on a platform called SKU.



WHITE_069-22_70-01_D (Running 00:00:14.515)

1. Page 69:22 to 70:01 (Running 00:00:14.515)

22 Q. So to your understanding in general, the SKU

Total Number of Clips:98
Total Number of Segments:98
Total Running Time:00:25:21.834

23 system and the training system and the materials that

24 are created for each during that time period were

25 separate systems and processes that didn't

01 cross-pollenate?



WHITE_070-03_70-04_D (Running 00:00:04.680)

1. Page 70:03 to 70:04 (Running 00:00:04.680)

03 THE WITNESS: That is a true statement. These

04 were separate systems. They were not linked.



WHITE_070-24_71-03_D (Running 00:00:10.070)

1. Page 70:24 to 71:03 (Running 00:00:10.070)

24 Q. Other than that limited instance, are you aware

25 of any other instances where your team's training

01 materials have been made available to third-party

02 retailers?

03 A. Not that I am aware of.



WHITE_073-22_74-06_D (Running 00:00:38.550)

1. Page 73:22 to 74:06 (Running 00:00:38.550)

22 Q. How many people are on that SKU team?

23 A. Is the question -- what's the time frame of

24 that question?

25 Q. At present.

01 A. At present that SKU team was just dissolved

02 into other roles. We're going through a reorganization

03 at Nike right now.

04 And I've obtained the SKU platform within the

05 last three weeks. It's now in my remit, and one

Total Number of Clips:98

Total Number of Segments:98

Total Running Time:00:25:21.834

06 individual moved from that SKU team to my team.



WHITE_074-07_74-25_D (Running 00:02:45.890)

1. Page 74:07 to 74:25 (Running 00:02:45.890)

- 07 Q. I'd like you to refer to Exhibit 12, which I
- 08 will be introducing now.
- 09 (Exhibit No. 12 was marked for
- 10 identification.)
- 11 THE WITNESS: Okay. I reviewed it.
- 12 BY MR. WAGNER
- 13 Q. What is this document?
- 14 A. Quick Start Guide, Domain Admin Users.
- 15 Q. Have you seen this document before?
- 16 A. Yes.
- 17 Q. And when did you see this document
- 18 approximately?
- 19 A. Yesterday.
- 20 Q. Do you know if Nike has a more updated version
- 21 of the quick start guide?
- 22 A. They do not.
- 23 Q. Are you familiar with this quick start guide
- 24 other than having seen it yesterday?
- 25 A. I was not until yesterday.



WHITE_076-10_76-11_D (Running 00:00:04.320)


1. Page 76:10 to 76:11 (Running 00:00:04.320)

- 10 Q. Have you been on the SKU platform?
- 11 A. Yes.

Total Number of Clips:98
Total Number of Segments:98
Total Running Time:00:25:21.834

1. Page 76:12 to 76:13 (Running 00:00:14.830)

12 Q. Turning to Page 3, is this an accurate
13 depiction of the layout of SKU?

 WHITE_076-15_76-22_D (Running 00:00:24.320)

1. Page 76:15 to 76:22 (Running 00:00:24.320)

15 THE WITNESS: So there's no -- I just counted
16 three pages. There's no page number. It's the one with
17 a screen grab of a green Nike Flyknit Zoom Agility?
18 BY MR. WAGNER
19 Q. That's correct.
20 A. I can't say specifically that this was accurate
21 to that time, but this generally looks like a SKU screen
22 shot, yeah.

 WHITE_076-23_76-25_D (Running 00:00:10.690)

1. Page 76:23 to 76:25 (Running 00:00:10.690)

23 Q. So turning to the next page that has a picture
24 captioned "Nike Flex Run 2014"?
25 A. Yes.

 WHITE_077-09_77-15_D (Running 00:00:18.660)


1. Page 77:09 to 77:15 (Running 00:00:18.660)

09 Q. Did you look at SKU in the 2015 and 2017 time
10 frame?
11 A. Yes.
12 Q. And does this general layout look consistent
13 with how the product-specific layout was from your

Total Number of Clips:98
Total Number of Segments:98
Total Running Time:00:25:21.834

14 recollection?

15 A. Yes, from my recollection.

 WHITE_077-16_77-20_CD (Running 00:00:15.960)

1. Page 77:16 to 77:20 (Running 00:00:15.960)

16 Q. So the top right of a product-specific page on
17 SKU during that time frame, it had the product tech
18 sheet available in .pdf?
19 A. To my recollection. I don't think there was
20 always a product tech sheet available.

 WHITE_080-24_81-03_D (Running 00:00:12.770)

1. Page 80:24 to 81:03 (Running 00:00:12.770)

24 I'm asking for your general understanding of whether
25 this layout is a fair representation of the general
01 layout of --
02 A. I would say --
03 Q. -- the products?

 WHITE_081-06_81-07_D (Running 00:00:08.530)

1. Page 81:06 to 81:07 (Running 00:00:08.530)

06 THE WITNESS: I would say my general
07 recollection, this is a familiar view of a SKU page.

 WHITE_082-04_82-05_D (Running 00:00:07.130)

1. Page 82:04 to 82:05 (Running 00:00:07.130)

04 Q. Who would have access to SKU in the Nike and
05 Nike retailer ecosystem?

 WHITE_082-11_82-13_D (Running 00:00:12.580)

1. Page 82:11 to 82:13 (Running 00:00:12.580)

Total Number of Clips:98
Total Number of Segments:98
Total Running Time:00:25:21.834

11 Q. In the Nike and Nike retailer ecosystem, so
12 whether it's a Nike personnel or a part of the ecosystem
13 that sells Nike products, for example, Dick's?



WHITE_082-16_83-06_D (Running 00:00:59.940)

1. Page 82:16 to 83:06 (Running 00:00:59.940)

16 THE WITNESS: Thank you for the clarification.
17 At the time, 2015 to 2017, the primary users
18 that had access to this were wholesale accounts like
19 Dick's.
20 I cannot speak to the level of access the
21 employee base at a Dick's store has. That would be an
22 assumption that they had direct access. But I know this
23 was made available to the Dick's organization.
24 And it was also made available by the SKU team
25 to Nike employees or Nike stores' partner. Those are
01 the partner stores I had described earlier. And they
02 would have to request access.
03 BY MR. WAGNER
04 Q. So Nike -- give me an example of a Nike partner
05 store.
06 A. There are no Nike partner stores in the U.S.



WHITE_083-09_CD (Running 00:00:04.380)

1. Page 83:09 to 83:09 (Running 00:00:04.380)

09 stores, would every employee in Nike have access to SKU?



WHITE_083-11_83-12_CD (Running 00:00:04.150)

1. Page 83:11 to 83:12 (Running 00:00:04.150)

Total Number of Clips:98
Total Number of Segments:98
Total Running Time:00:25:21.834

11 THE WITNESS: If they requested access, they

12 could get access.

 **WHITE_083-14_83-15_CD** (Running 00:00:04.420)

1. Page 83:14 to 83:15 (Running 00:00:04.420)

14 Q. Do you know who are assigned access without

15 having to request it?

 **WHITE_083-17_83-18_CD** (Running 00:00:03.090)

1. Page 83:17 to 83:18 (Running 00:00:03.090)

17 THE WITNESS: I don't know of anyone assigned

18 access.

 **WHITE_084-21_84-23_D** (Running 00:00:14.510)

1. Page 84:21 to 84:23 (Running 00:00:14.510)

21 Q. Is the purpose of SKU in 2015 to 2017 to train

22 retail associates of third-party retailers, or is it a

23 broader constituency that also use SKU?

 **WHITE_084-25_85-04_D** (Running 00:00:22.970)

1. Page 84:25 to 85:04 (Running 00:00:22.970)

25 THE WITNESS: The primary purpose of SKU was to

01 provide access to product knowledge for our third-party

02 wholesale -- we called them customers at the time. It

03 was made available as an option for all retail and NSP

04 folks as well.

 **WHITE_086-04_86-05_D** (Running 00:00:05.720)

1. Page 86:04 to 86:05 (Running 00:00:05.720)

04 At the present, do you know what level of

05 retail associate engagement the Nike SKU Pro gets?

Total Number of Clips:98
Total Number of Segments:98
Total Running Time:00:25:21.834

1. Page 86:07 to 86:08 (Running 00:00:03.270)

07 THE WITNESS: At present I have a general
08 understanding.

 WHITE_086-10_86-11_D (Running 00:00:04.090)

1. Page 86:10 to 86:11 (Running 00:00:04.090)

10 Q. How much engagement does it get by retail
11 associates?

 WHITE_086-13_86-22_D (Running 00:00:34.740)


1. Page 86:13 to 86:22 (Running 00:00:34.740)

13 THE WITNESS: Can you clarify the retail
14 associate population you're meaning?
15 BY MR. WAGNER
16 Q. Yes. Managers or associates that work at an
17 actual third-party retailer store location.
18 A. Oh, the third-party retail. Okay.
19 I don't -- I can't share numbers, but I can
20 give a -- like, generally a percentage. It has gone
21 down, and it's around 25 percent of the usage today of
22 SKU is wholesale.

 WHITE_087-13_87-15_D (Running 00:00:10.500)

1. Page 87:13 to 87:15 (Running 00:00:10.500)

13 Q. So out of all the log-ins that have -- I'm
14 sorry -- out of all the accounts that have been assigned
15 for SKU, 25 percent of them have a log-in, correct?


 WHITE_087-17_87-23_D (Running 00:00:14.150)

17 THE WITNESS: Is there -- this is an
18 approximation.
19 BY MR. WAGNER
20 Q. Yes.
21 A. And a generalization. Okay.
22 So of the current log-ins on the most recent
23 run of the numbers, yes.

 **WHITE_088-16_88-18_D (Running 00:00:08.830)**


1. Page 88:16 to 88:18 (Running 00:00:08.830)

16 Q. So 25 percent -- you say it went down to
17 25 percent. What's the highest that engagement has
18 been?

 **WHITE_088-20_D (Running 00:00:02.800)**

1. Page 88:20 to 88:20 (Running 00:00:02.800)

20 THE WITNESS: I also don't know that answer.

 **WHITE_088-22_D (Running 00:00:02.880)**

1. Page 88:22 to 88:22 (Running 00:00:02.880)

22 Q. Do you know if it's ever been above 50 percent?

 **WHITE_088-24_88-25_D (Running 00:00:03.600)**

1. Page 88:24 to 88:25 (Running 00:00:03.600)

24 THE WITNESS: I do know it's been above
25 50 percent.

 **WHITE_092-03_92-04_D (Running 00:00:11.570)**

1. Page 92:03 to 92:04 (Running 00:00:11.570)

03 How, if at all, are Nike retail athletes

04 advised that information on a product has changed?



WHITE_092-06_92-08_D (Running 00:00:11.500)

1. Page 92:06 to 92:08 (Running 00:00:11.500)

06 THE WITNESS: If that were to occur -- that is
07 a very rare instance -- it would be communicated in the
08 huddle or the athlete check-in.



WHITE_092-10_92-12_D (Running 00:00:14.610)

1. Page 92:10 to 92:12 (Running 00:00:14.610)

10 Q. Do you know if any of the accused products ever
11 had a rare instance where information was conveyed in
12 this fashion to the Nike retail athletes?



WHITE_092-14_92-16_D (Running 00:00:13.610)

1. Page 92:14 to 92:16 (Running 00:00:13.610)

14 THE WITNESS: I don't recall -- regarding the
15 accused products, I don't recall any information needing
16 to be shared about a change in this product.



WHITE_092-18_92-20_D (Running 00:00:10.970)

1. Page 92:18 to 92:20 (Running 00:00:10.970)

18 Q. So when you say it's a rare instance when
19 there's a product change that needs to be advised, would
20 a name change qualify as such rare instance?



WHITE_092-22_93-01_D (Running 00:00:19.960)

1. Page 92:22 to 93:01 (Running 00:00:19.960)

22 THE WITNESS: I have no memory of the name
23 change communication regarding any product. The rare
24 instance is typically when there is a quality or safety

Total Number of Clips:98
Total Number of Segments:98
Total Running Time:00:25:21.834

25 issue with a product that's been removed from the

01 assortment for inspection or something like that.



WHITE_093-03_93-06_D (Running 00:00:15.800)

1. Page 93:03 to 93:06 (Running 00:00:15.800)

03 Q. Do you know if the -- I apologize if we already

04 covered this -- the retail, third-party retail associate

05 engagement of SKU was higher or lower in 2015 to '17

06 than it is now?



WHITE_093-08_93-10_D (Running 00:00:09.980)

1. Page 93:08 to 93:10 (Running 00:00:09.980)

08 THE WITNESS: I generally know that the usage

09 of the SKU platform by our wholesale audience was higher

10 in 2015 to '17 than it is today.



WHITE_096-23_96-25_D (Running 00:00:20.185)

1. Page 96:23 to 96:25 (Running 00:00:20.185)

23 Q. Do you know of any time that a Nike store or

24 its retail athletes have been advised to cease use of a

25 term because of a naming dispute?



WHITE_097-11_97-20_CD (Running 00:00:38.370)

1. Page 97:11 to 97:20 (Running 00:00:38.370)

11 THE WITNESS: A clarifying question again. Is

12 this referring to Nike retail or wholesale third-party

13 retail?

14 BY MR. WAGNER

15 Q. Nike-owned retail.

16 A. I have no memory of a name change direction for

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Total Number of Segments:98


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17 a product.

18 Q. How about for third-party retailers?

19 A. No. At the time I wasn't working with

20 third-party -- or with wholesale, rather.

 WHITE_105-09_105-11_D (Running 00:00:16.800)

1. Page 105:09 to 105:11 (Running 00:00:16.800)

09 Q. So why would a retailer athlete or retail

10 associate be less likely to use this phrase at the top

11 simply because you believe it's descriptive?

 WHITE_105-13_105-15_D (Running 00:00:10.010)

1. Page 105:13 to 105:15 (Running 00:00:10.010)

13 THE WITNESS: Again, I can share my opinion.

14 This is a very long -- this is like a sentence, and I


15 don't believe that they would say all of that.

 WHITE_105-17_105-18_D (Running 00:00:04.680)

1. Page 105:17 to 105:18 (Running 00:00:04.680)

17 Q. So do you think they'd break it down to

18 something like Nike Pro Combat Cool Compression shirt?

 WHITE_105-22_105-24_D (Running 00:00:06.400)

1. Page 105:22 to 105:24 (Running 00:00:06.400)

22 I don't know what they would break it down to,

23 but I'm pretty confident they wouldn't say this entire


24 sentence.

 WHITE_106-02_106-03_D (Running 00:00:06.970)

1. Page 106:02 to 106:03 (Running 00:00:06.970)


02 Q. Do you know if they would use the term "cool

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 WHITE_106-05_106-06_D (Running 00:00:02.940)

1. Page 106:05 to 106:06 (Running 00:00:02.940)

05 THE WITNESS: I don't know if they would use
06 that.

 WHITE_106-08_106-09_D (Running 00:00:04.179)


1. Page 106:08 to 106:09 (Running 00:00:04.179)

08 Q. Even though it's right there in bold at the top
09 of the page of the tech sheet?

 WHITE_106-11_106-13_D (Running 00:00:10.470)

1. Page 106:11 to 106:13 (Running 00:00:10.470)

11 THE WITNESS: That would -- that would be --
12 not an assumption, but it would be me supposing what
13 someone would do. I can't do that.

 WHITE_106-15_106-17_D (Running 00:00:11.006)

1. Page 106:15 to 106:17 (Running 00:00:11.006)

15 Q. Why does Nike have tech sheets where the name
16 at the top is twice as big of text as any other text on
17 the page?

 WHITE_106-19_106-21_D (Running 00:00:07.741)

1. Page 106:19 to 106:21 (Running 00:00:07.741)

19 THE WITNESS: I can't answer for this format or
20 this document. This is not something that I was
21 responsible for or involved with.

 WHITE_106-23_106-24_D (Running 00:00:06.930)

1. Page 106:23 to 106:24 (Running 00:00:06.930)

Total Number of Clips:98
Total Number of Segments:98
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23 Q. Why would Nike put a name or descriptive name

24 at the top of the tech sheet?



WHITE_107-01_107-02_D (Running 00:00:04.720)

1. Page 107:01 to 107:02 (Running 00:00:04.720).

01 THE WITNESS: I would be making an assumption.

02 I don't think I could answer that on behalf of Nike.



WHITE_107-04_107-11_D (Running 00:00:28.450)

1. Page 107:04 to 107:11 (Running 00:00:28.450).

04 Q. Why did Nike at the left first sentence of this

05 tech sheet once again use the same term, only this time

06 with capital first letters in the form of a sentence,

07 when it said:

08 "Stay locked in with Nike Pro Combat

09 Cool Compression men's short sleeve shirt

10 and free to move with four-way stretch and

11 raglan sleeves"?



WHITE_107-13_107-14_D (Running 00:00:07.300)

1. Page 107:13 to 107:14 (Running 00:00:07.300).

13 THE WITNESS: I can't answer the question of

14 why because I have no involvement in this document.



WHITE_107-16_107-19_D (Running 00:00:12.669)

1. Page 107:16 to 107:19 (Running 00:00:12.669).

16 Q. Isn't the purpose of using the same name twice

17 in this document, or any tech sheet, to emphasize to the

18 viewer that this is a name that should be used for the

19 product?

Total Number of Clips:98

Total Number of Segments:98

Total Running Time:00:25:21.834


1. Page 107:21 to 107:22 (Running 00:00:06.821).

21 THE WITNESS: I would answer that the same that
22 I can't make that assumption or answer.

 WHITE_107-24_108-03_D (Running 00:00:17.720)

1. Page 107:24 to 108:03 (Running 00:00:17.720).

24 Q. And isn't it correct that using capital letters
25 to offset each of the terms in this name, even when
01 speaking of it in a sentence, is to make sure that the
02 viewer sees it as an important name and not just a mere
03 description?

 WHITE_108-05_108-07_D (Running 00:00:10.979)


1. Page 108:05 to 108:07 (Running 00:00:10.979).

05 THE WITNESS: Again, I have no responsibility
06 or editing of this document, so I have no idea why they
07 did it. I can't answer that for someone else.

 WHITE_108-09_108-10_D (Running 00:00:05.281)


1. Page 108:09 to 108:10 (Running 00:00:05.281).

09 Q. In preparing materials for your own training
10 materials, do you use bold to emphasize text?

 WHITE_108-12_D (Running 00:00:01.950)

1. Page 108:12 to 108:12 (Running 00:00:01.950).

12 THE WITNESS: We sometimes do, yes.

 WHITE_108-14_D (Running 00:00:03.290)

1. Page 108:14 to 108:14 (Running 00:00:03.290).

14 Q. Do you use larger size text to emphasize text?

Total Number of Clips:98
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1. Page 108:16 to 108:17 (Running 00:00:07.950).

16 THE WITNESS: In formatting we have title case,
17 subtitle case, body, text at different case levels.

 WHITE_108-19_108-20_D (Running 00:00:07.990)

1. Page 108:19 to 108:20 (Running 00:00:07.990).

19 Q. And the highest case level is larger text to
20 emphasize it, correct?

 WHITE_108-22_108-23_D (Running 00:00:05.089)


1. Page 108:22 to 108:23 (Running 00:00:05.089).

22 THE WITNESS: It's simply a technique to make
23 different things stand out on a page.

 WHITE_108-25_109-01_D (Running 00:00:03.830)

1. Page 108:25 to 109:01 (Running 00:00:03.830).

25 Q. Because a larger text will stand out more than
01 smaller text, correct?

 WHITE_109-03_D (Running 00:00:02.500)

1. Page 109:03 to 109:03 (Running 00:00:02.500).

03 THE WITNESS: It would, yes.

 WHITE_109-05_109-08_D (Running 00:00:14.730)


1. Page 109:05 to 109:08 (Running 00:00:14.730).

05 Q. And when you're creating training materials, do
06 you repeat names or benefits or concepts multiple times
07 to emphasize their importance and make sure they stay in
08 the trainee's head?

 WHITE_109-10_109-11_D (Running 00:00:05.700)

Total Number of Clips:98
Total Number of Segments:98
Total Running Time:00:25:21.834

10 THE WITNESS: That's situational based on the
11 topic, the document, the type of training it is.

 **WHITE_109-13_D (Running 00:00:01.720)**


1. Page 109:13 to 109:13 (Running 00:00:01.720).

13 Q. Have you used that technique?

 **WHITE_109-15_109-17_D (Running 00:00:06.188)**


1. Page 109:15 to 109:17 (Running 00:00:06.188).

15 THE WITNESS: Generally, I would say I'm sure
16 there are documents where we repeat information to make
17 it stick.

 **WHITE_164-14_164-17_D (Running 00:00:12.639)**

1. Page 164:14 to 164:17 (Running 00:00:12.639).

14 For Nike-owned retail athletes engaging
15 customers, when a customer comes in the store, what are
16 they trying to do in terms of when and how to approach
17 that customer?

 **WHITE_164-19_165-02_D (Running 00:00:34.451)**

1. Page 164:19 to 165:02 (Running 00:00:34.451).

19 THE WITNESS: So we call that moment the
20 welcome, and so the objective is to make consumers feel
21 welcome by giving them a warm greeting, a warm hello in
22 their own words. Again, we don't script that to them.
23 And we also ask them to begin with open-ended
24 questions so that they understand why the consumer has,
25 you know, come in and they can direct them to where in

01 the store they need to go or direct them to another

02 athlete, you know, to start working with them.



WHITE_165-15_165-18_D (Running 00:00:15.879)

1. Page 165:15 to 165:18 (Running 00:00:15.879).

15 Q. And when they come in the door and an

16 open-ended question is asked, at that point are the

17 specific products discussed, or is it a general area

18 that they're taken to or is it both?



WHITE_165-20_166-06_D (Running 00:00:39.147)

1. Page 165:20 to 166:06 (Running 00:00:39.147).

20 THE WITNESS: I would say it's situational

21 based on the response. Sometimes a consumer comes in,

22 and they know exactly what they want. They've seen it

23 on the website and they just need to be directed to that

24 and helped with a size and fitting room.

25 At other times they come in and they're less

01 clear about why they're here. So they're, like, I want

02 to start running. So then the athlete would probably do

03 a handoff to another athlete who's zoned in the running

04 section or is well trained in that category, and they

05 could hand them off to them for a more in-depth

06 experience.



WHITE_171-15_171-17_D (Running 00:00:10.970)

1. Page 171:15 to 171:17 (Running 00:00:10.970).

15 Do Nike retail athletes in the Nike-owned

16 stores focus on higher-priced products more than

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17 lower-priced products?



WHITE_171-19_171-20_D (Running 00:00:07.011)

1. Page 171:19 to 171:20 (Running 00:00:07.011)

19 THE WITNESS: We do not provide training that
20 indicates that or directs that.



WHITE_171-23_171-25_D (Running 00:00:11.451)

1. Page 171:23 to 171:25 (Running 00:00:11.451)

23 When you provide training, do you encourage
24 Nike retail athletes to focus on selling the more
25 expensive items over the less expensive items?



WHITE_172-02_172-07_D (Running 00:00:13.480)

1. Page 172:02 to 172:07 (Running 00:00:13.480)

02 THE WITNESS: We do not.
03 BY MR. WAGNER
04 Q. Does the training emphasize spending more time
05 with customers for expensive products than less
06 expensive products?
07 A. We do not.




WHITE_172-13_172-25_D (Running 00:00:34.210)

1. Page 172:13 to 172:25 (Running 00:00:34.210)

13 Are retail athletes encouraged to spend the
14 necessary time based on the customer's needs regardless
15 of how much or how expensive a product they wish to
16 purchase?
17 A. Yes, they are encouraged to spend as much time
18 or as little time as is right for that consumer.


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19 Q. And it's not based on the value of the purchase
20 to Nike, correct?
21 A. Absolutely not.
22 Q. So if someone came in to buy socks, they should
23 get just as much level of attention that's necessary to
24 them as someone who came in to buy \$200 shoes, correct?
25 A. Yes.

 **WHITE_200-14_200-16_D** (Running 00:00:06.444)


1. Page 200:14 to 200:16 (Running 00:00:06.444).

14 Q. And you have never ascribed a particular
15 importance to the term "cool" adjacent to "compression,"
16 correct?

 **WHITE_200-18_D** (Running 00:00:01.920)

1. Page 200:18 to 200:18 (Running 00:00:01.920).

18 THE WITNESS: I have not.

 **WHITE_200-20_200-22_D** (Running 00:00:09.480)

1. Page 200:20 to 200:22 (Running 00:00:09.480).

20 Q. And you're familiar with both of those terms
21 being used in training materials in some way in 2015 and
22 2017, correct?

 **WHITE_200-25_201-03_D** (Running 00:00:11.890)


1. Page 200:25 to 201:03 (Running 00:00:11.890).

25 THE WITNESS: Yes, I generally know that we
01 would use "cool" as an adjective and "compression" as a
02 noun describing products, but "Cool Compression" is not
03 a thing together.

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1. Page 201:22 to 202:02 (Running 00:00:18.750).

22 Q. Yes. Is there any reason that you can think of
23 why in 2015 to 2017, as you're looking at training
24 materials that are coming across your desk, seeing
25 "cool" adjacent to "compression" would have stood out to
01 you more so than seeing "cool" somewhere and
02 "compression" somewhere else?

 WHITE_202-04_202-09_D (Running 00:00:19.580)


1. Page 202:04 to 202:09 (Running 00:00:19.580).

04 THE WITNESS: I mean, "Cool Compression"
05 together sounds like it's a thing, like it's almost
06 hyphenated, becoming a noun in and of itself. That
07 would -- I would think that would stand out to me like
08 "Dri-FIT." Dry is an adjective. Fit is a noun.
09 Dri-FIT together becomes a thing.

 WHITE_202-11_202-13_D (Running 00:00:08.330)

1. Page 202:11 to 202:13 (Running 00:00:08.330).

11 Q. And that would have stood out to you because
12 that's sort of more than just an adjective and a noun,
13 it's a new thing that's being referred to, correct?

 WHITE_202-15_D (Running 00:00:02.569)

1. Page 202:15 to 202:15 (Running 00:00:02.569).

15 THE WITNESS: Yes.